

1 IN THE DISTRICT COURT OF THE UNITED STATES
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

3 UNITED STATES OF AMERICA,)
4)
4 Plaintiff,) Judge Wells
5) Cleveland, Ohio
5 vs.)
6) Criminal Action
6 JAMES A. TRAFICANT, JR.,) Number 4:01CR207
7)
7 Defendant.)

8 - - - - -
9 TRANSCRIPT OF PROCEEDINGS HAD BEFORE
10 THE HONORABLE LESLEY WELLS
11 JUDGE OF SAID COURT,
12 ON WEDNESDAY, APRIL 3, 2002
13 Jury Trial
14 Volume 31

15 - - - - -

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Terlecky - Direct

1 WEDNESDAY, APRIL 3, 2002, MORNING SESSION, 9:04 A.M.

2 THE COURT: Who is your witness, Congressman?

3 MR. TRAFICANT: Michael Terlecky.

4 THE COURT: I want to remind you, this is a
5 limited examination on recall of a witness for a specific
6 purpose.

7 THE COURT: Good morning. Would you raise
8 your right hand, please?

9 (The Witness is Sworn)

10 THE COURT: If you would remember to speak up
11 loudly.

12 THE WITNESS: Yes.

13 DIRECT EXAMINATION OF MICHAEL S. TERLECKY

14 BY MR. TRAFICANT:

15 Q. Would you give your full name and spell your last
16 name again for the jury?

17 A. Michael, middle initial S, as in Sam; Terlecky, T as
18 in Tom, E R L E C K Y.

19 Q. Are you known by a nickname?

20 A. Beef. The Beef.

21 Q. What is your residence?

22 A. Leffingwell Road in Canfield, Ohio, L E F F I N G W E
23 L L, Road.

24 Q. Do you have immunity for your testimony?

25 A. No, sir.

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1 Q. Do you know what immunity means?

2 A. Yes, sir.

3 MR. MORFORD: Objection.

4 THE COURT: We have said several times that
5 is part of what the Court instructs the jury. Thank you,
6 counsel.

7 Q. How many times have you been to Cleveland in this
8 case?

9 A. Six or seven times.

10 Q. How many times have you testified --

11 A. Well, I've stayed up here though, except for today.

12 Q. How many times have you testified before the jury?

13 A. This will be my second time.

14 Q. Do you recall the last time you'd seen a Mr. Charles
15 O'Nesti?

16 A. Yes, I do.

17 Q. Where did you see Mr. O'Nesti?

18 A. He was a passenger in a pick-up truck parked in a
19 parking lot of the Speedway. I think it was the Speedway
20 Gas Station on Market Street in North Lima, Beaver
21 Township, B E A V E R, Ohio. That's North Lima, Ohio, the
22 address.

23 Q. Is that a suburb of the city of Youngstown?

24 A. Yeah. Yes.

25 Q. When did you first see him?

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1 A. When I was walking out of the gas station towards my
2 vehicle, he called my name.

3 Q. And where was Mr. O'Nesti when he called your name?

4 A. He was parked next to my vehicle. He was a passenger
5 in a pick-up truck.

6 Q. Did you engage in any conversation at that point with
7 Mr. O'Nesti?

8 A. Yes, sir.

9 Q. Was it while he was seated in the pick-up truck?

10 A. He first called my name from the pick-up truck, and
11 then he exited the vehicle.

12 Q. When he exited the vehicle, what, if anything, did he
13 do?

14 A. He walked towards me, and as he was walking towards
15 me, he passed me up, and he went to a newspaper box to
16 probably maybe roughly 10, 15 feet maybe away.

17 Q. Where was the newspaper box located?

18 A. Directly in front of both our vehicles at the
19 Speedway, outside the Speedway Gas Station.

20 Q. What was the near proximity --

21 A. I'm sorry. I can't hear you.

22 Q. What was the near proximity of the newspaper box to
23 the building you had exited?

24 A. It was right up against the building, I believe.

25 Q. What did you observe Mr. O'Nesti do?

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1 A. He made a statement. Then he went and bought a
2 newspaper.

3 Q. Now, did you engage in a conversation with Mr.
4 O'Nesti after he had purchased the newspaper?

5 A. Yes, sir, I did.

6 Q. And what, in essence, did Mr. O'Nesti say?

7 A. From the beginning?

8 Q. Did he make a statement before?

9 A. Yes, he did.

10 Q. He went to the newspaper --

11 A. He made a statement as he was approaching the
12 newspaper box saying, "Who is the government intimidating
13 now?"

14 Q. Then what did you observe him do?

15 A. Buy a newspaper.

16 Q. Now that he bought the newspaper, did you see him
17 observe the newspaper?

18 A. He was looking at the front page as he walked back
19 towards me.

20 Q. Was there anything of significance on the front page?

21 A. I believe there was a picture of you on it. It was
22 either your name or your picture. I think it was your
23 picture.

24 Q. At that point did Mr. O'Nesti make any conversation?

25 A. Yes, he did.

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1 Q. What, if anything, did he say?

2 A. He said to me -- I'm trying to think. At the
3 beginning, he said to me that I would be hearing things,
4 and he just wanted me to know that it was not true --

5 Q. Let's stop there. When he said "I," was he referring
6 to himself or to you as Mr. Terlecky?

7 A. He -- say that again, sir?

8 Q. When he said "I would be hearing things," was he
9 referring to you?

10 A. He meant me, I would be hearing things. Mike
11 Terlecky, I would be hearing things about you, Jim
12 Traficant.

13 Q. And what else followed that?

14 A. He said that what I would be hearing was not true.

15 Q. What, if anything, did you say?

16 A. I tried to change the subject more or less. I told
17 him, "Well, let's worry about your health right now,"
18 because of his condition, and he kept referring to you.

19 Q. What was the condition of his voice?

20 A. Like a person with cancer, kind of scratchy, kind of
21 sickly.

22 Q. Was he hard to hear?

23 A. No.

24 Q. Did you get close to Mr. O'Nesti?

25 A. As close as -- yes, yes. Our vehicles were right

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1 next to each other and we were standing between the
2 vehicles, and he got into his truck.

3 Q. Did he offer any other statements concerning Jim
4 Traficant?

5 A. He told me that I would be hearing that he was
6 supposed to be then giving you kickbacks, and I didn't
7 understand what he was talking about, and I kept trying to
8 change the subject. But he did say that he did lend you
9 money, and there started to be like tears in his eyes a
10 little bit, but he kind of chuckled when he said it because
11 he said you always paid the money back you borrowed from
12 him.

13 And when he chuckled, he said, "Almost on
14 time sometimes even."

15 Q. Did he mention anything else about kickbacks?

16 A. Just --

17 Q. Did he say he gave or did not give kickbacks?

18 THE COURT: Don't reply for him.

19 Excuse me. He's testifying. He's doing a fine job.
20 No testimony from you.

21 Q. What, if anything, did he say relative to the
22 kickbacks?

23 A. He said he did not never give you a kickback.

24 Q. Did you engage --

25 A. And I didn't understand what he was talking about

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1 because I'd never heard of nothing about that. But
2 evidently he did. I kept trying to change the subject.

3 Q. Did he make any further conversation with you
4 relative to his condition?

5 A. There was some brief -- I can't remember exactly what
6 he said, but he was talking about his condition, but I
7 think he felt like a man that was going to live, to be
8 honest with you, and I just felt bad. He was crying. He
9 wasn't crying like crying-crying, but he had tears in his
10 eyes, and you would have to understand our relationship
11 from before.

12 He always tried to explain things to me for
13 whatever reason. I could tell you why, but he didn't go
14 into it.

15 Q. Did he mention any concerns relative to his
16 condition?

17 A. He was very angry at the government --

18 MR. MORFORD: Objection.

19 THE COURT: Okay. You can question these
20 witnesses that you bring back on recall for specific
21 purposes, in this case it's regarding the contents of
22 impeaching statements made to them.

23 THE WITNESS: There's a statement made, Your
24 Honor, but I don't know if you want me to use the exact
25 words he made.

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1 THE COURT: Well, I'm not the one asking you
2 the questions.

3 Q. What, if anything --

4 THE COURT: Excuse me. I'm telling the
5 Congressman and reminding him that there are limits on this
6 examination.

7 Q. What, if anything, did he say --

8 A. Exactly?

9 Q. -- in that conversation?

10 A. Towards the end of the conversation he says, "Them
11 sons-of-bitches" --

12 MR. MORFORD: Objection.

13 THE COURT: You can testify. Testify. Say
14 it.

15 A. He said, "Them sons-of-bitches won't let me die at
16 home." And I kept telling him he's not going to die. And
17 he said, well, he felt he was, and then I don't really
18 think he felt he was, but he knew he was sick. He knew he
19 was real sick.

20 I didn't even at first recognize him. He had lost
21 that much weight. He knew what he was talking about
22 though. He knew me.

23 Q. As a police officer, did you ever identify public
24 documents?

25 A. Yes, sir.

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1 MR. MORFORD: This has already been admitted,
2 Your Honor. It's a deed.

3 THE COURT: Can you tell us the number of the
4 exhibit, Congressman, so we know if it's already been
5 admitted?

6 MR. TRAFICANT: It's a public document
7 already been exhibited as Defense Exhibit dash B-O-B.

8 THE COURT: It's already been admitted in the
9 case, sir. It's here, it's part of the evidence in the
10 case for the jury.

11 MR. TRAFICANT: I wanted this witness who has
12 knowledge of deeds to, in fact, identify certain elements
13 of it.

14 THE COURT: Well, I'm sorry, but it's been
15 admitted. The deed is what it says on it, and there's no
16 reason to have I guess -- are you currently in law
17 enforcement?

18 THE WITNESS: I was. I'm currently retired
19 on disability right now.

20 THE COURT: Okay. He's not in a position to
21 give them any more information than the deed itself gives
22 them.

23 Q. Did you ever have a mortgage, Mr. Terlecky?

24 A. Yes, sir.

25 Q. Did you get a hundred percent mortgage on a property?

Terlecky - Cross

1 THE COURT: This is not part of the limited
2 purpose of this examination of this witness.

3 MR. TRAFICANT: No further questions.

4 THE COURT: Thank you, sir.

5 CROSS-EXAMINATION OF MICHAEL S. TERLECKY

6 BY MR. MORFORD:

7 Q. Sir, you just stated right at the end of your
8 examination, I believe in response to the Judge's question
9 of whether you were a law enforcement officer --

10 A. Would you speak up, please?

11 Q. Yes. In answer to the Judge's question of whether
12 you are currently a law enforcement officer, you said, "I'm
13 currently retired on disability," correct?

14 A. Yes, sir.

15 Q. And in fact, you're also a convicted felon, correct?

16 A. Yes, sir, I am.

17 Q. And as a convicted felon, you could not serve as a
18 police officer today, could you?

19 A. Yes, sir, I could.

20 Q. You could serve as a police officer even though
21 you've been convicted of RICO bribery for accepting bribes
22 from --

23 A. Yes, sir. There is a statement from the sheriff of
24 Mahoning County in my file that -- excuse me, that if my
25 health permitted it, he has a position as sworn deputy

Terlecky - Cross

1 where you don't have to carry a firearm, and I would be
2 reinstated to my pay and rank, but I would not be allowed
3 to carry a firearm.

4 Q. It's your testimony that in Mahoning County, they
5 would let a convicted felon who's been convicted of
6 receiving bribes from the Mafia when he was a sheriff's
7 deputy serve as a sheriff's deputy again?

8 A. I believe at that time the sheriff believed I was
9 innocent.

10 Q. Which sheriff was that, sir?

11 A. Sheriff Nemeth, Ed Nemeth.

12 Q. And that was the sheriff that you were convicted of
13 carrying bribes from the Mafia to, correct?

14 A. That's your statement, sir, not mine.

15 Q. Well, what were you charged with, sir?

16 A. Count 6 of my indictment.

17 Q. What was Count 6 of your indictment?

18 A. You'll have to read it to me. As far as I know, it
19 was accepting bribes to protect gambling which I was
20 unlawfully convicted, in my opinion.

21 Q. What was your position at that time?

22 A. I was lieutenant with the Mahoning County Sheriff's
23 Department.

24 Q. You were the lieutenant in charge of the vice squad
25 that was in charge of conducting --

Terlecky - Cross

1 A. We didn't have a vice squad, sir, per se. I was a
2 lieutenant. I worked burglaries, homicides. I didn't have
3 the luxury of having 19,000 people. I was working by
4 myself or maybe with a few other deputies, and sometimes I
5 had a full-time sergeant assigned to me. I didn't work a
6 lot with the Youngstown Police Department making gambling
7 raids.

8 Q. Sir, what does a vice squad usually do?

9 A. In our department? In my department that I worked?

10 Q. In any department. What kinds of crimes?

11 A. We didn't have a vice squad.

12 Q. What kind of crimes do they normally do?

13 A. I'm sorry, sir?

14 Q. What kind of crimes do they normally do?

15 A. Vice crimes?

16 Q. Yes.

17 A. Prostitution, gambling, sometimes narcotics was part
18 of it, a vice crime. I never considered narcotics a vice
19 crime, but some departments do.

20 Q. Let's talk about gambling.

21 A. Yes, sir.

22 Q. Was there a squad in the Mahoning County Sheriff
23 Department --

24 A. Say again, sir. Was there a what?

25 Q. Was there a squad in the Mahoning County Sheriff's

Terlecky - Cross

1 Department when you were a deputy that was in charge of
2 gambling enforcement?

3 A. Not really, sir. I did most of it though.

4 Q. Well, sir, let me ask you this: Do you recall
5 testifying in a case against former Mahoning County Sheriff
6 Phil Chance, when I asked you this question:

7 "Q. Well, sir, weren't you the head of the vice
8 squad of the Mahoning County Sheriff's Department during
9 those years?

10 "A. We didn't really have a vice squad. It was
11 my -- my title was lieutenant. I handled burglaries,
12 homicides, gambling, and narcotics."

13 Wasn't that your testimony?

14 A. That's what I just said.

15 Q. So you were handling gambling investigations,
16 correct?

17 A. Isn't that what I just said exactly, what you just
18 read.

19 Q. You were handling gambling investigations, correct?

20 A. I just said that to you.

21 Q. Were you the lieutenant in charge of gambling
22 investigations?

23 A. I guess. There was people ahead of me. I worked for
24 a captain, but I mean I don't know what you're trying to
25 get to. I said exactly what you just said. My testimony

Terlecky - Cross

1 didn't change from now to then.

2 Q. My question is: Did you handle gambling
3 responsibilities?

4 A. I said yes, sir.

5 MR. TRAFICANT: Objection. Asked and
6 answered. This is a limited examination, and you did not
7 allow me to go into his past background.

8 THE COURT: Well, there's a different purpose
9 in allowing him to go into the statements elicited on your
10 direct examination at the end of his testimony, and so he
11 can proceed.

12 Q. Now, sir --

13 A. Yes.

14 Q. -- isn't it true that during the time that you were a
15 lieutenant handling the enforcement of gambling laws for
16 the Mahoning County Sheriff's Department that illegal
17 gambling activities in the Mahoning County were often run
18 by organized crime?

19 A. A lot of it was, yes, sir.

20 Q. And then --

21 A. Can I add something to that?

22 Q. Sure. Go ahead.

23 A. I probably made more raids and more arrests, as a
24 matter of fact, I can't think of another lieutenant that
25 even did what I did. I worked day and night. I worked day

Terlecky - Cross

1 turn and night turn. Sometimes I didn't know when I was
2 working and when I was off.

3 Q. Did you ever arrest Lennie Strollo?

4 A. Say it again, sir?

5 Q. Did you ever arrest Lennie Strollo?

6 A. I had no reason to. No, sir.

7 Q. No reason to? He was one of the heads of organized
8 crime, was he not?

9 A. I know that now, yeah.

10 Q. Well, you knew that then, did you not?

11 A. No, sir.

12 Q. You didn't know --

13 A. I thought Joey Naples was the head of the Mafia in
14 Youngstown, Ohio. At that time I did not know Lennie
15 Strollo, per se, until I met him one time. I heard of his
16 brother Dante Strollo, and I knew that he had something to
17 do with gambling in Mahoning County, but --

18 Q. Sir. It's your testimony --

19 A. Say it again? I can't hear you. I'm having a hard
20 time hearing you.

21 Q. Did you have a hard time hearing Congressman
22 Traficant when he was asking questions?

23 A. Yes, I did. I told him to speak up, too. I have
24 a -- just go ahead.

25 Q. Okay, sir. Let me ask you this: You were a

Terlecky - Cross

1 sheriff's deputy from 1997 to 1998, correct?

2 A. No, sir.

3 Q. What years? Until 1988, I'm sorry. 11 years, right?

4 A. Approximately.

5 Q. And it's your testimony that as a sheriff's deputy in
6 Mahoning County for 11 years who was responsible for
7 enforcing the state gambling statutes, you didn't know that
8 Lennie Strollo was a Mafia person who was involved in
9 illegal gambling?

10 A. You didn't ask that. You asked if he was the head of
11 it, I thought.

12 Q. Why don't you answer that question. Did you know
13 Lennie Strollo --

14 A. His name surfaced many times, yes.

15 Q. But you never arrested him, did you?

16 A. No. That wasn't my job to arrest him. As a matter
17 of fact, he was an informant of mine, like he is yours.

18 Q. You said you pled guilty to Count 6 of an indictment,
19 correct?

20 A. I believe it was Count 6, yes, sir.

21 Q. And basically that was a RICO charge that charged you
22 with RICO bribery for accepting bribes to protect Lennie
23 Strollo's gambling rackets, correct?

24 A. Most of that I think is correct, yes.

25 Q. And then you came into this very courtroom and stood

Terlecky - Cross

1 in front of a different Federal Judge and told the Judge
2 that you were, in fact, guilty of that offense, did you
3 not?

4 A. Yes, sir. I was intimidated into doing that, yes, I
5 was.

6 Q. And you raised your right hand just like you did
7 today and swore to tell the truth, did you not?

8 A. The same as Lennie Strollo did when he --

9 Q. That's not my question.

10 A. He said he never gave me a cent, nothing, he told me,
11 under oath in this same courtroom just like you said. He
12 raised his hand, too.

13 Q. Sir, as a former law --

14 A. I pled guilty, yes, I did.

15 Q. And you pled guilty under oath, correct?

16 A. To be honest with you, I don't think I was under
17 oath. But if I was, so what?

18 Q. So what?

19 A. Yeah. So what?

20 Q. You told a judge you were guilty and today you're
21 saying you're not guilty and so what?

22 A. When you plead guilty, when do they swear you in? I
23 don't believe I ever took an oath when I pled guilty. But
24 are you saying that I did?

25 Q. Sir, you were a law enforcement officer. You mean to

Terlecky - Cross

1 say when people plead guilty, you don't know that they
2 raise their right hand and swear to tell the truth before
3 they enter their guilty plea?

4 A. I'm going to tell you, sir, I don't remember ever
5 raising my right hand. I don't remember ever swearing to
6 nothing. As a matter of fact, Judge Lambros told me when I
7 stood up, he said, "Just sit down." I didn't give
8 testimony. All I did was plead guilty.

9 Q. Let me get this right then: You're saying you pled
10 guilty, but you're really not guilty? Is that your
11 testimony?

12 A. This is true, yes.

13 Q. So you're saying that you did not take bribes from
14 Lennie Strollo?

15 A. This is true, yes. I did not take bribes.

16 Q. You're basically an innocent guy that got pressured
17 into falsely admitting your guilt?

18 A. Yes, this is true.

19 Q. And did you explain that to Congressman Traficant?

20 A. Yes, I think I did.

21 Q. You've told him that you were wrongfully convicted
22 and you really weren't guilty?

23 A. Probably. I've been telling that to everybody I
24 know.

25 Q. I'm not asking probably. You've had direct

Terlecky - Cross

1 conversations with Congressman Traficant about this. What
2 have you told him?

3 A. About what, sir?

4 Q. About whether or not you were guilty of the crime
5 that you pled to, RICO bribery.

6 A. I just said I was not. That's about the third time
7 I've said it. I don't know how else to say it to you.

8 Q. Now, you have filed a petition at one time asking the
9 President of the United States to pardon you; is that
10 correct?

11 A. Almost three years ago, yeah, under President
12 Clinton.

13 Q. And at the time that you did that, you talked to
14 Congressman Traficant, did you not?

15 A. Shortly after, yes, sir.

16 Q. And you asked him to write a letter to the President,
17 did you not?

18 A. I don't believe I did, sir.

19 Q. Well, he did write a letter to the President for you?

20 A. Yes, he did.

21 Q. And you've seen that letter, correct?

22 A. Yes, I believe I did. Yes, I did.

23 Q. Well, sir, what do you mean you believe you did?
24 This is a major event in your life, correct?

25 A. It was also a major event in my life when they -- as

Terlecky - Cross

1 soon as I left the courtroom the other day, I had it in the
2 mailbox the same date I was supposed to testify here, they
3 turned me down. The same date on my subpoena that I was
4 supposed to be in this courtroom, I got a letter from the
5 Justice Department when I got home from this Court, after
6 three years, and the president never signed it.

7 The Justice Department signed it. I didn't
8 apply to the Justice Department. I applied to the
9 President. They didn't even mention his name in it. I was
10 turned down. The 20th of last month that I was subpoenaed
11 in this Court, they made it a point to tell me in the
12 subpoena and I think the Congressman in the paper, very
13 unofficial looking, that the Justice Department turned me
14 down, like I didn't know it was coming.

15 I knew if I testified here, that it would be
16 turned down, but I'm telling the truth. If that means to
17 be turned down, then so be it.

18 Q. Are you done?

19 A. Are you done?

20 Q. No. Are you done? Is there anything else you want
21 to add?

22 A. I don't know. Is there anything else you want to
23 ask?

24 Q. I asked you a question. You just gave a five-minute
25 answer that had nothing to do with my question.

Terlecky - Cross

1 MR. TRAFICANT: Objection. Asked and
2 answered.

3 THE COURT: Let's go back and read the
4 question and then ask you to answer the question.

5 A. Ask the question.

6 THE COURT: Wait, wait. Go back and read the
7 question.

8 THE COURT REPORTER: "Well, sir, what do you
9 mean you believe you did? This is a major event in your
10 life, correct?"

11 Q. That's my question.

12 A. A major event in my life, sir, is one of my dogs gets
13 hit by a car, my mother passes away. Those are major
14 events.

15 Q. How about trying to get a conviction thrown out so
16 that it will be pardoned as though it never happened;
17 that's a major event, correct?

18 A. It's an event.

19 Q. It's an important event?

20 A. As of this moment, no. It was.

21 Q. Well, at the time it was, certainly, correct?

22 A. It was an event, yes, sir.

23 Q. When you talked to Congressman Traficant about
24 writing letters on your behalf, you told him the same thing
25 you just told this jury, that you were not guilty, correct?

Terlecky - Cross

1 A. Yes, I did.

2 Q. That you had been framed, correct?

3 A. I don't believe I ever used the word "framed," but --

4 Q. "Pressured" was your word?

5 A. "Intimidated" was my word, was my exact word.

6 Q. And so you told them that?

7 A. I told everybody I was in contact with.

8 Q. I'm not talking about everybody you contacted.

9 A. Yes, I told you that before, and I'm telling you now
10 I told him that.

11 Q. You told him you had not actually done those
12 offenses, correct?

13 A. This is correct.

14 Q. And you told him you were not taking responsibility
15 for these offenses because you're claiming that you never
16 did them, correct?

17 A. Correct. I will not take responsibility for
18 something I didn't do.

19 Q. Let me show you what's been marked Government's
20 Exhibit 81.

21 MR. TRAFICANT: Are you going to show me?

22 MR. MORFORD: Yes, I will.

23 A. What is your question, sir?

24 Q. Sir, this is a copy of the letter that Congressman
25 Traficant wrote to President Clinton on your behalf asking

Terlecky - Cross

1 him to pardon you for this offense, is that correct?

2 A. That's what it looks like, yes. I don't believe I
3 ever seen this one before. I did see a letter, but I don't
4 believe it was this one. But whatever -- what's the
5 question?

6 Q. The question is: I'd like you to read the letter out
7 loud, sir.

8 MR. TRAFICANT: Objection. He says he never
9 saw this letter.

10 A. This is news to me, I mean this actual document here.
11 I've seen letters. He wrote several letters. I got
12 several letters.

13 Q. He never gave you a copy of the letter he wrote to
14 President Clinton, sir?

15 A. Not this one.

16 THE COURT: Well, take a minute and look
17 through it all. Don't rush him. Just let him take a
18 minute.

19 A. I would never let this letter go through.

20 Q. Let me ask you a couple things.

21 A. Sure.

22 Q. To the extent the letter says, "Michael was found in
23 violation" --

24 MR. TRAFICANT: Objection. He did not know
25 or have knowledge of the letter. And I object to it being

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1 placed into the record unless he can bring in the person to
2 verify this letter, similar to the standards placed upon
3 the defendant.

4 MR. MORFORD: Your Honor, I'll withdraw the
5 question. I'll ask another question.

6 THE COURT: Thank you.

7 Q. Did you ever tell Congressman Traficant that you had
8 only been found in violation of federal gambling laws as
9 opposed to RICO bribery? Did you ever tell him that?

10 A. Repeat the question. Slow down a little bit. I
11 don't follow you.

12 Q. Did you ever tell Congressman Traficant that you had
13 been merely convicted of federal gambling violations as
14 opposed to RICO bribery?

15 A. I have no knowledge of -- I don't understand --

16 Q. Did you ever tell that to Congressman Traficant?

17 A. I told him I was innocent.

18 Q. Did you ever tell him you had merely been convicted
19 of federal gambling violations as opposed to RICO bribery?

20 A. I don't think so.

21 Q. Did you ever tell Congressman Traficant that you
22 recognized and acknowledged your mistakes?

23 A. Definitely not. I mean, I made some bad judgments,
24 if that's what you mean. It may be ethical, but not
25 criminal by any means.

Terlecky - Cross

1 Q. So you never told him those things?

2 A. What things, sir?

3 Q. What I just asked you.

4 A. I don't understand what you're -- I told you
5 that -- ask the question again. You're yelling and -- I'm
6 on medication, sir. I'm taking antibiotics; I'm tired. I
7 got up at 3:00 in the morning. You have to slow down and
8 quit yelling at me.

9 Q. Sir, when I talk quietly, you tell me to talk loudly.

10 A. You can raise your voice without being intimidating.

11 Q. I'm just going until you find a modulation you like,
12 okay?

13 A. You do that, and I'll let you know.

14 Q. Did you ever tell Congressman Traficant with respect
15 to the charges to which you pled that you recognized and
16 acknowledged the mistakes that you had made?

17 A. Possibly, if it's a matter of bad judgment or
18 something like that. I don't remember.

19 Q. What's the bad judgment if you didn't do the crimes
20 in the first place, sir?

21 A. Well, there was a lot of bad judgment, sir. There
22 are a lot of things I could go back and do over again, but
23 they're not criminal. I accepted a thousand dollars off of
24 Lennie Strollo that was nothing to do with a bribe. I
25 would never do it again. It was money owed to me. But I

Terlecky - Cross

1 testified, no one had tapes of me, no one --

2 Q. No one had tapes of you?

3 A. Not of that.

4 Q. Oh.

5 A. And I brought that up voluntarily. I did take a
6 thousand dollars off of Lennie Strollo, and he was repaying
7 me a loan from an employee of his, and I would never do it
8 again. I think it's unethical, and I think I redeemed
9 myself by making all the gambling raids after that to show
10 that nobody did own me. And I made arrests and I called
11 the IRS and brought them with me, so nobody can say I was
12 trying to fix something; and the same places your FBI
13 agents raided. The only difference was I made arrests.
14 You guys just made snitches. I arrested people.

15 Q. Sir, when did you retire from the police force?

16 A. I retired after my accident on 3-21-88, was the last
17 day I worked.

18 Q. How close in time was that to your indictment?

19 A. Exactly one month. I was indicted 4-21-88.

20 Q. Now, were you aware that in July of 2000, Congressman
21 Traficant wrote a letter to President Clinton on your
22 behalf?

23 A. He wrote several letters, yes, sir.

24 Q. My question was: Were you aware that he wrote a
25 letter to --

Terlecky - Cross

1 A. What did I just say?

2 Q. -- to President Clinton in July of 2000?

3 A. Oh, July of 2000? I don't recall the date, no, sir.
4 It sounds right. I think I applied in June, so that would
5 probably be -- I would have to say probably, but I don't
6 remember exactly.

7 Q. Are you aware that he wrote another letter on your
8 behalf to President Bush just days after President Bush was
9 inaugurated?

10 A. I don't remember that, sir, but it's possible.

11 Q. You weren't aware of that?

12 A. I don't remember it, sir, but it's possible.

13 Q. Is it fair to say you're grateful to Congressman
14 Traficant for taking up your cause, sir?

15 A. He probably cost me my cause, but I'm grateful. He
16 did what he was supposed to do. I'm a constituent of his,
17 and he's my Congressman.

18 Q. And since the time he began taking up your cause,
19 you've been taking up his cause to some extent, correct?

20 A. What's his cause, sir?

21 Q. I'm just asking you, have you ever --

22 A. What's his cause, sir? I don't know what his cause
23 is. Tell me what his cause is, and I'll answer your
24 question.

25 Q. Were you here in court yesterday?

Terlecky - Cross

1 A. No, sir.

2 Q. Where were you, sir?

3 A. From the time I got up, or what time specifically?

4 Q. Let's take the hours 12:00 to 3:00, where were you at
5 that time?

6 A. Conneaut, Ohio.

7 Q. What were you doing?

8 A. I was on a radio talk show called the Louie Free
9 show. I'll have tapes of it tomorrow if you want them.

10 Q. Anything else you want to add? I didn't ask you a
11 question, sir.

12 A. Oh. I was just finishing my answer, sir.

13 Q. Now, this conversation that you say you had with Mr.
14 O'Nesti --

15 A. Yes, sir.

16 Q. -- who else was present and overheard Mr. O'Nesti
17 tell you these things?

18 A. I do not know the person who was in the driver's seat
19 of the pick-up truck. I have no idea who it was, and I do
20 not know if he overheard the conversation.

21 Q. You weren't sitting in the pick-up truck having this
22 conversation, were you?

23 A. I was standing between my vehicle and the pick-up
24 truck.

25 Q. So basically it's you and Mr. O'Nesti talking,

Terlecky - Cross

1 correct?

2 A. I would have to assume so.

3 Q. And you've said that at that time he had a very weak
4 voice, correct?

5 A. No, sir. I said it was kind of scratchy, kind of
6 sickly.

7 Q. As you sit here today, there's no one else that
8 overheard that conversation you're aware of other than
9 that, correct?

10 A. I never asked nobody if they overheard it, but I
11 would assume they probably didn't. He wasn't yelling in
12 the parking lot, the conversation.

13 Q. You have nothing to support your testimony that this
14 conversation occurred except your own word, correct?

15 A. I didn't know I would have to, sir. I didn't know it
16 was relevant, to be honest with you.

17 MR. MORFORD: May I have just a moment, Your
18 Honor?

19 THE WITNESS: Your Honor, can I move my foot
20 here a little? It is awkward and hurts me very badly.

21 THE COURT: There's a better chair maybe for
22 you.

23 THE WITNESS: I just want to move back. I
24 don't want you to think I'm --

25 MR. MORFORD: I have nothing further, Your

Terlecky - Redirect

1 Honor.

2 THE COURT: If you want to, see the chair
3 behind you?

4 THE WITNESS: I'm fine as long as I can move
5 back a little bit.

6 THE COURT: Is it okay? All right.

7 REDIRECT EXAMINATION OF MICHAEL S. TERLECKY

8 BY MR. TRAFICANT:

9 Q. What exactly was the count that you were convicted
10 of?

11 A. You know, it sticks in my mind Count 6. I could be
12 wrong, but I remember my attorney telling me I'll be
13 pleading guilty to Count 6 of my indictment. It was a -- I
14 do remember, I do remember it was a B-2 sentence --

15 Q. Was there money involved in Count 6?

16 A. Possibly. I don't remember. I think it was \$5,000,
17 that's what they were referring to. \$5,400 when they
18 stopped me on a search warrant, and they took 5,000 off of
19 me.

20 Q. They took 5,400 off of you on a search warrant when?

21 A. Back in 1986, a couple years before I was indicted,
22 and then they gave me back \$400 at the same time. They
23 kind -- they counted off 5,000 and they gave me back 400.

24 Q. Where did they stop you on the search warrant and who
25 stopped you?

Terlecky - Redirect

1 A. A bunch of FBI agents. Hmm. Woodworth Road, North
2 Lima. As a matter of fact, I was on my way back to deliver
3 the 5,000 that I borrowed.

4 Q. Who did you borrow the 5,000 from?

5 A. Carl Rango.

6 Q. You borrowed it from Carl whom?

7 A. Carl Rango borrowed the money on a Corvette, and the
8 check was cashed at Western Reserve Bank and he gave me the
9 money the night before.

10 Q. Who cashed the check?

11 A. Carl Rango. It was in his name.

12 Q. Where did the government allege that the \$5,000 came
13 from?

14 A. I believe they said that Lennie Strollo paid me
15 \$5,000 to protect the gambling operations in Mahoning
16 County. I believe that was basically what they said. You
17 mean the FBI now or do you mean at the time?

18 Q. Yeah. The FBI, on your indictment.

19 A. On my indictment or when I got stopped on the
20 warrant?

21 Q. At some point on this \$5,000, what did the government
22 allege, where did you get this money?

23 A. They said I got it from Lennie Strollo.

24 Q. Did Lennie Strollo ever admit to giving you \$5,000?

25 A. He denied it under oath, sir. When he pled guilty,

Terlecky - Redirect

1 he denied it under oath. It was published in the paper.

2 It is in court record. He said he never gave Mike Terlecky
3 no money.

4 Q. Was that before --

5 A. Nothing illegal.

6 Q. Was that before or after you took a plea in the
7 court?

8 A. I took the plea after he said it because they didn't
9 drop the charges. I didn't want to go to jail for as long
10 as they told me I would.

11 Q. Who was your attorney?

12 A. Stewart Mandel, sir.

13 Q. Did he ever work for a government entity?

14 A. He was a United States prosecutor.

15 Q. Where?

16 A. Right here.

17 Q. Did anyone in the history of Mahoning County make any
18 gambling arrests more than you?

19 A. No, sir. As a matter of fact, whenever there was a
20 sports betting operation, the city of Youngstown wouldn't
21 even make it. They would call me and they were working
22 right with the FBI at the time. I actually thought I was,
23 too.

24 Q. Where would you place your evidence?

25 A. Most of the time the Youngstown Police Department

Terlecky - Redirect

1 SIU, because I never had a key to our evidence locker or
2 nothing. Sometimes I kept some stuff in my office if I
3 thought it wasn't going to court.

4 Q. Did any of your evidence come up missing?

5 A. Yes, sir.

6 Q. Who took it?

7 A. Special Agent Robert Kroner.

8 Q. What agency was he involved with?

9 A. FBI, sir.

10 Q. In what location?

11 A. Youngstown, Ohio.

12 Q. Did you confront Agent Kroner about it?

13 A. Yes, sir, I did.

14 Q. What, if anything, did you conclude after talking
15 with Agent Kroner?

16 A. He put my life in danger and he gave the tape back.

17 MR. MORFORD: Objection, Your Honor. This is
18 getting way far afield.

19 MR. TRAFICANT: No. They brought up this
20 matter. I want to continue the cross.

21 THE COURT: Well, they brought up some of
22 this matter.

23 MR. TRAFICANT: This is salient to the
24 matter.

25 THE COURT: Which matter is it salient to,

Terlecky - Redirect

1 sir?

2 MR. TRAFICANT: The questioning of his
3 innocence, guilt, pardon, and pleading.

4 THE COURT: Well, it's a matter of record
5 whether or not he pled guilty. He's explaining the
6 circumstances, but it's a matter of record. You can get
7 the papers and produce that if you want to.

8 MR. TRAFICANT: Well, so could the government
9 have. They had the right to question him and I have the
10 right to examine him on the cross-examination. If you want
11 to take a side-bar, I will, but I want to continue with
12 this witness directly.

13 THE WITNESS: Your Honor, there are no tapes.

14 THE COURT: There are no papers in the court.

15 THE WITNESS: They disappeared, ma'am.

16 Q. What happened to the papers relative --

17 THE COURT: We're talking about a court case.

18 THE WITNESS: I'm sorry. I thought you meant
19 the evidence he took.

20 THE COURT: No, no. We're not -- this case
21 is not about whatever happened to you in your case, which
22 is something that you certainly should pursue somewhere,
23 but this is not the forum to pursue that. And there is
24 some examination that can be made of you, but we can't
25 spend the day with our jury, who has this case --

Terlecky - Redirect

1 MR. TRAFICANT: Objection.

2 THE COURT: -- who has --

3 MR. TRAFICANT: You limited me.

4 THE COURT: Would you excuse me, sir? I'll
5 just finish speaking, if you don't mind.

6 MR. TRAFICANT: Go ahead.

7 THE COURT: Thank you. We have to deal with
8 the issues in this case which involve the charges in this
9 case against this defendant, and not what happened to you
10 in your case, which was apparently in the Northern District
11 of Ohio, also.

12 MR. TRAFICANT: Objection for the record, and
13 I would like to speak to the Court.

14 You told me to limit my questioning to his
15 conversations with O'Nesti.

16 THE COURT: That's right.

17 MR. TRAFICANT: They broke open his
18 conviction, they broke open his pleading, they broke open
19 the elements of all of that, and I have a right under now
20 my redirect to address the prosecution's cross of this
21 witness. Yes or no?

22 THE COURT: Since you're arguing your motion
23 in front of the jury, which is not the way we normally do
24 it, I'll permit Mr. Morford on this one occasion to respond
25 to the argument you're currently making so that the jury

Terlecky - Redirect

1 can see how the laws of evidence actually apply and how the
2 Judge rules on things.

3 MR. TRAFICANT: I thought that the Judge told
4 the law to the jury.

5 THE COURT: Right, but you've just given one
6 side of the story here. We'll let him give his side and
7 then I'll make a ruling.

8 MR. TRAFICANT: He --

9 THE COURT: Congressman, the other side now
10 has a chance to talk.

11 MR. MORFORD: Congressman -- when the
12 Congressman originally called Mr. Terlecky, he brought out
13 the fact of the conviction. What he failed to bring out
14 was that Mr. Terlecky denies he was guilty and that
15 Congressman Traficant went to bat for him. Those are
16 matters that go to impeachment. Those are matters to go to
17 the witness's credibility.

18 THE WITNESS: You stopped --

19 MR. MORFORD: I was merely responding and
20 questioning and following up on things that Congressman
21 Traficant had brought up on direct.

22 I didn't object for a period of time, but now he's
23 getting into things that are far afield from whatever
24 impeachment was brought out, and that had nothing to do
25 with the issues that are before this jury. We're not

Terlecky - Redirect

1 trying the case of Mr. Terlecky. We're trying the case of
2 Congressman Traficant.

3 MR. TRAFICANT: Now I'd like to respond.
4 They are trying Mr. Terlecky. When I proceeded --

5 THE COURT: Congressman, you don't need to
6 respond. It's not necessary. If you would just wait a
7 moment, I'll rule and we can go forward.

8 MR. TRAFICANT: You did not allow me to go
9 further on Mr. O'Nesti on direct when I first started.

10 THE COURT: Congressman --

11 MR. TRAFICANT: Two weeks ago.

12 THE COURT: Congressman, just wait a minute,
13 so I can give you a ruling here.

14 MR. TRAFICANT: I'm going to wait.

15 THE COURT: It's true that there are some
16 issues which can be raised when a person has testified to
17 any matter that deal with a person's credibility and
18 whether or not he can be impeached. Credibility is always
19 an issue before a jury.

20 It's part of the jury's responsibility here to make
21 decisions about witnesses' credibility. So it was possible
22 for you to do it in a limited way that's relevant to what
23 happened on the stand here today, in his testimony here
24 today, to try and counter, as you may have successfully
25 done, some of the issues that the government raised

Terlecky - Redirect

1 regarding his credibility, but it has to stop at a certain
2 point, and now you've gone past the point.

3 This is not an examination into this
4 witness's situation regarding his own case. So now if you
5 move to the next question, if you have something else to
6 raise that was raised by the government in their
7 cross-examination, we'll address it.

8 MR. TRAFICANT: Objection. This deals with
9 the veracity of the witness and impeaching another witness,
10 and I am now being limited again to not even pursue the
11 prosecution's --

12 THE COURT: Do you have any further
13 questions?

14 MR. TRAFICANT: I have further questions.

15 THE COURT: All right. Well, go ahead.

16 Q. In Mahoning Valley, how many years have there been
17 the presence of the FBI and the IRS?

18 MR. MORFORD: Objection.

19 THE COURT: Sustained.

20 Q. Did you ever take the IRS out with you on your
21 gambling raids?

22 A. Yes, sir.

23 Q. Did anything I did regarding your matter have any
24 effect or bearing on your testimony today?

25 A. No, sir, none whatsoever.

Terlecky - Redirect

1 THE COURT: Don't keep talking. Wait for a
2 question.

3 Q. You answered the government's question that you were
4 denied and you have come to be denied your pardon and you
5 gave a specific date. What date was that, sir?

6 A. The 20th of last month. I was served on the 14th,
7 told to appear here on the 20th, but I didn't get to take
8 the stand for -- I had to stay up here in Cleveland for
9 three or four days then, but the subpoena read the 20th.

10 Q. And when did you receive your letter from the Justice
11 Department that the pardon was denied?

12 A. When I got home from Cleveland, it was in my mail.

13 Q. On what date?

14 A. The day after Easter, I'm sorry.

15 Q. Was there a date on it?

16 A. The date, yes, it was. It was in the letter that it
17 was denied on the 20th, the same day my subpoena was -- I
18 was supposed to testify.

19 Q. Now, you were also asked about further pursuits, and
20 why you probably did not get it, and you made a statement
21 that someone was probably responsible for you not getting
22 your pardon.

23 A. There is no doubt you were.

24 Q. Is that your testimony?

25 A. Yes, sir, it is.

Terlecky - Redirect

1 Q. That I did not help? Did I hurt you?

2 A. Yes, sir, you did.

3 Q. And why did you come to that conclusion?

4 MR. MORFORD: Objection. This is all
5 speculation on his part. He doesn't know why his pardon
6 was denied.

7 THE WITNESS: Yes, I do.

8 THE COURT: You may have an idea about why it
9 was, but that's not going to further the jury's work in
10 this case.

11 Q. Do you have an idea or do you have knowledge,
12 Mr. Terlecky?

13 A. I'm not sure what the difference is. I believe I
14 have knowledge of it, maybe. Maybe it's not knowledge. I
15 believe I have knowledge.

16 THE COURT: Well, was there an explanation --

17 THE WITNESS: Wait a minute.

18 THE COURT: -- of why you didn't get the
19 pardon? Did they send you something that explained why you
20 didn't get the pardon?

21 THE WITNESS: I don't have a copy, but if he
22 reads it to you or shows it to you, I'm sure even you will
23 see there's something definitely wrong here. The
24 President's name -- the Constitution says the President
25 grants you a pardon.

Terlecky - Redirect

1 THE COURT: Right.

2 THE WITNESS: They don't refer to the
3 President even in the letter at all, just the Justice
4 Department, and the White House. I mean the White House is
5 not -- he never signed it. President Bush --

6 THE COURT: But the question is: Did they
7 give you a reason in it for denying it?

8 THE WITNESS: Yes. They told me presidential
9 pardons are very rare, and I kind of started laughing. I
10 watch CNN just like everybody else.

11 THE COURT: Those are your --

12 THE WITNESS: Then they said, "Don't take it
13 personal" -- they also said, Your Honor, "Don't take it
14 personal," because the bottom of the letter said I could be
15 a very good person, and I could be rehabilitated and all
16 this stuff, but that's just the way it is because they
17 don't grant pardons so freely.

18 THE COURT: Thank you.

19 Q. Do you have a copy of that letter?

20 A. I do not have it on me. I did give a member of your
21 staff a copy of the subpoena. I left it -- it was left on
22 your desk in your office in Canfield, but I don't have a
23 copy on me, no, sir, I don't.

24 Q. Could you make a copy of it available to this Court?

25 A. When I go back to Canfield, I have the original.

Terlecky - Redirect

1 Q. Now --

2 THE COURT: I would suggest you make it
3 available to the Congressman.

4 THE WITNESS: I'm sorry, Your Honor. I
5 thought he had it, but I should have brought it.

6 THE COURT: Well, maybe he does, but don't
7 make it available to the Court. I can't do anything with
8 it unless it comes through the normal channels of evidence.

9 MR. TRAFICANT: Would he not be the recipient
10 of the letter?

11 THE WITNESS: Sir -- can I add something,
12 Your Honor?

13 THE COURT: No. Guys, let's move on with the
14 questions.

15 MR. TRAFICANT: I ask that that letter be
16 provided at a later date by Mr. Terlecky for the record.

17 MR. MORFORD: Objection.

18 THE COURT: Well, the objection is sustained.
19 You can go through the normal process. We've been doing it
20 for nine weeks, and you know what it is.

21 BY MR. TRAFICANT:

22 Q. Did Mr. Strollo give you \$5,000?

23 A. No, sir.

24 Q. Is that what Count 6 of the RICO charge was about?

25 A. I think. I'll be completely honest with you, I never

Terlecky - Redirect

1 read the indictment. I just listened to my attorney.

2 Q. Were you prepared to go to trial?

3 A. I was, but he wasn't.

4 Q. Were you encouraged by your attorney to cop a plea?

5 A. Yes, sir.

6 Q. Did you come to find out that your attorney was
7 affiliated with the mob boss, Lennie Strollo, in business?

8 MR. MORFORD: Objection. He's testifying.

9 MR. TRAFICANT: They brought up the Lennie
10 Strollo business.

11 THE COURT: Congressman.

12 MR. TRAFICANT: This is salient.

13 THE COURT: It is not -- I don't know if it's
14 salient. That's your choice of words. But it's not
15 relevant to what our jury has to work with here.

16 MR. TRAFICANT: It's relative to his
17 veracity, and that's what we're here for.

18 THE COURT: I'm sorry, Congressman, but that
19 doesn't fly here. Move.

20 Q. Are you under oath, Mr. Terlecky?

21 A. Yes, sir.

22 Q. Was your attorney affiliated with the mob boss?

23 A. Yes, sir.

24 Q. Was he in business with the mob boss?

25 A. Yes, sir.

Terlecky - Redirect

1 Q. Did he encourage you to take a plea?

2 A. Yes, sir.

3 Q. Did you take that plea?

4 A. Yes, sir.

5 Q. Did you serve your time?

6 A. Yes, sir.

7 Q. Is it a fact that the prosecution spent 90 percent of
8 their time on your felony record?

9 MR. MORFORD: Objection. He's testifying,
10 Your Honor, and has been.

11 THE COURT: You can't --

12 Q. How much of the --

13 THE COURT: Congressman, move to another
14 question.

15 MR. TRAFICANT: Yes, I certainly shall.

16 THE COURT: Thank you.

17 Q. How much time of the cross-examination was spent on
18 your felony record?

19 MR. MORFORD: Objection. The jury heard it.

20 THE COURT: The jury has been here with me.
21 We've all heard the cross-examination.

22 A. It's there, sir. There's no doubt --

23 THE COURT: Wait. Don't testify without a
24 question.

25 Q. Was it your impression that the prosecution's

Terlecky - Redirect

1 attempts were to demean you?

2 MR. MORFORD: Objection.

3 A. You mean --

4 THE COURT: The objection is sustained. The
5 jury is here to make decisions about witnesses and about
6 the way the case is conducted. So move on to something
7 else, if you have something else for Mr. Terlecky.

8 Q. Are you in fairly ill health at this point?

9 A. I'm sorry, sir?

10 Q. Are you in fairly ill health at this point?

11 A. Yes, sir.

12 Q. What are your troubles?

13 A. I don't want to go into them, but if you want me to,
14 I will.

15 Q. That's fine. Could you go back to work?

16 A. Physically, no, sir.

17 Q. Would you be able to perform the services of a law
18 enforcement officer if you were healthy?

19 A. No, sir.

20 Q. You would not be -- is it because of your disability
21 to carry a firearm?

22 A. Yes -- no, sir. My physical condition.

23 Q. If you were physically healthy, could you go back to
24 law enforcement work?

25 A. I could have. I can't carry a gun now, sir. I'm a

Terlecky - Redirect

1 convicted felon yet.

2 THE COURT: There's no question right now,
3 sir.

4 THE WITNESS: All right.

5 THE COURT: Just sit back and relax. We'll
6 see if there are more questions here. Have --

7 MR. TRAFICANT: There was a question and he
8 took his time to answer it. He was allowed to do so under
9 cross, and I object for the record.

10 Q. Did you admit to me at some point you'd made mistakes
11 in your life?

12 A. Yes, sir. Nothing I'm ashamed of though. I would
13 make some changes though.

14 Q. Was that search warrant served on you after Agent
15 Kroner took the evidence from the Youngstown Police
16 Department?

17 MR. MORFORD: Objection.

18 THE COURT: Sustained. Disregard that
19 question, please.

20 Q. Are you familiar, sir, with the chain of evidence
21 requirements in a criminal case?

22 A. Yes, sir, I am.

23 MR. MORFORD: Objection.

24 THE COURT: That is a matter that the law in
25 federal courts is for the Judge to determine, and I will

Terlecky - Recross

1 instruct you on any of that if you need to know about it.

2 Thank you.

3 Q. Were you screwed by an ex-USA attorney?

4 MR. MORFORD: Objection.

5 THE COURT: Go ahead and answer.

6 A. I think I heard the question right. Could you repeat
7 that again?

8 Q. Were you screwed?

9 THE COURT: I don't think we need to --

10 Q. Were you screwed by a United States -- former United
11 States Assistant Attorney?

12 A. This is very hard for me to say, but I was, yes.

13 MR. TRAFICANT: No further questions.

14 THE COURT: Thank you.

15 RE CROSS-EXAMINATION OF MICHAEL S. TERLECKY

16 BY MR. MORFORD:

17 Q. Sir, are you aware that Stewart Mandel himself was
18 convicted of conspiring with Lennie Strollo?

19 A. Yes, sir, I am.

20 Q. And he was prosecuted by me, correct?

21 A. I don't know that, but if you say so.

22 Q. Did you know he was prosecuted by my office?

23 A. The United States Attorney's Office?

24 Q. Yes.

25 A. I don't know you personally, no.

Terlecky - Recross

1 Q. Do you know if he was prosecuted by the United States
2 Attorney's Office for the Northern District of Ohio?

3 A. Yes.

4 Q. Despite the fact that he was a former assistant,
5 correct?

6 A. Say that again?

7 Q. Despite the fact that he was a former Assistant
8 United States Attorney, correct?

9 A. Ask the whole question at one time. I don't
10 understand.

11 Q. You understand that he was prosecuted by my office
12 despite the fact that he used to work for my office back in
13 the 1960s, correct?

14 A. If that's what you're saying is true, okay.

15 Q. And he worked for my office back in the 1960s,
16 correct?

17 A. It was my understanding he worked for the prosecutor
18 who prosecuted me. I don't know. I didn't meet you until
19 that Superbowl party when you wanted me to testify.

20 MR. MORFORD: No further questions.

21 A. And I didn't.

22 MR. TRAFICANT: I have some questions.

23 THE WITNESS: Mr. Morford? I have nothing
24 against you, sir. You never hurt me.

25 THE COURT: He's not even there. He's not

Terlecky - Further Redirect

1 even --

2 MR. TRAFICANT: He's not on trial.

3 THE WITNESS: I feel like I'm on trial.

4 MR. TRAFICANT: I'd like now to redirect the
5 cross.

6 FURTHER REDIRECT EXAMINATION OF MICHAEL S. TERLECKY
7 BY MR. TRAFICANT:

8 Q. Do you know if Mr. Stewart Mandel was arrested for
9 being in business with mob boss Lennie Strollo?

10 A. Yes, sir.

11 Q. Was he convicted after Lennie Strollo?

12 A. Yes, sir.

13 Q. Do you have any knowledge that he was associated with
14 organized crime while he was a member of the United States
15 Attorney's team?

16 A. Could you repeat that, please?

17 Q. Do you have any knowledge that he was, in fact,
18 associated with the mob while he served as an Assistant
19 United States Attorney?

20 A. Do I have personal knowledge? No.

21 Q. Do you know where he came from before he was
22 appointed to the United States Attorney's Office?

23 A. Yes, sir, I do.

24 Q. What prosecuting office did he represent?

25 A. The city of Youngstown, I believe. He might have

1 been the prosecutor or the assistant. I'm not sure. I did
2 trust him because of a friend of mine he was good friends
3 with.

8 A. That's where I grew up, sir.

10 A. Yes, sir.

13 A. Yes, sir. I believe so. I don't know if it was
14 directly after that, but I think it was, based on
15 everything I've heard. I wasn't there.

17 A. I don't know.

19 THE COURT: This witness can't talk about
20 those things.

23 MR. MORFORD: Objection.

25 THE COURT: Sustained, sustained. It has

Terlecky - Further Redirect

1 nothing to do with this case.

2 Q. Are you telling the truth about your conversation
3 with Mr. O'Nesti in the parking lot at the Speedway in
4 North Lima?

5 MR. MORFORD: Objection. This is well beyond
6 the scope, Your Honor.

7 THE COURT: He's under oath, sir.

8 MR. TRAFICANT: I object to these
9 unreasonable jack-in-the-box objectionable objections from
10 objectionable objectors.

11 THE COURT: Do you want to go to the next
12 question?

13 Q. Have you seen any physical evidence in this case
14 regarding Jim Traficant?

15 MR. MORFORD: Objection.

16 A. No, sir.

17 THE COURT: Sustained.

18 MR. TRAFICANT: No further questions.

19 THE COURT: Thank you.

20 MR. MORFORD: Nothing further.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you. Your Honor, am I
23 subject to recall?

24 THE COURT: You can just step down.

25 THE WITNESS: Can I go into the room and

Terlecky - Further Redirect

1 watch the trial?

2 THE COURT: I don't really know.

3 MR. TRAFICANT: I would ask that the witness
4 remain in the witness room.

5 THE COURT: I think you -- well, you
6 certainly are released as far as this Court is concerned.

7 THE WITNESS: Well, if I go in the room, I
8 can't be called back.

9 THE COURT: I'm sorry, but he has you under a
10 subpoena.

11 THE WITNESS: I have no subpoena.

12 THE COURT: Well, he called you, so you can
13 work this out with the Congressman whether he wants you to
14 stay, whether you want to stay, but I would suggest since
15 he asked for a separation of witnesses, you not put
16 yourself in a position --

17 THE WITNESS: I just don't want to have to
18 come back up here if I don't have to. I'll get a room
19 tonight. I'm not in no condition to be driving back and
20 forth. That's all I'm asking for.

21 THE COURT: You're released as far as I'm
22 concerned. I don't have any --

23 THE WITNESS: Well, you released me last
24 time, Your Honor, and he recalled me. If I would have
25 walked into the room last time, I couldn't have been here.

Terlecky - Further Redirect

1 In all honesty, nobody told me I was subject to recall last
2 time. You said I had to --

3 THE COURT: You're excused.

4 THE WITNESS: Thank you.

5 THE COURT: I would suggest you not go into
6 the overflow room.

7 THE WITNESS: Suggest or order?

8 THE COURT: I'm not ordering you to do
9 anything, sir. You're released from this trial.

10 THE WITNESS: Thank you.

11 MR. TRAFICANT: You are still under my
12 subpoena. I'd ask you to remain in the witness room.

13 THE WITNESS: Okay.

14 (Witness excused.)

15 MR. TRAFICANT: I'd request now a break, if
16 you would, to inquire about my witness, and if my witness
17 has appeared, and then we do take the morning break at this
18 time.

19 THE COURT: Who is your next witness, sir?

20 MR. TRAFICANT: I'm calling Mr. Michael
21 Robertson on the return subpoena.

22 MR. MORFORD: He's already testified, Your
23 Honor.

24 THE COURT: He's testified in the case.
25 We've heard his testimony.

1 MR. TRAFICANT: He's testified on an ongoing
2 matter of documents subject to subpoena of Mr. Sinclair,
3 which more banking information has now come to me as
4 recently as this morning.

5 THE COURT: Okay. Well, we'll look at that.
6 We'll take a break.

7 Who are your other witnesses today, so we know what
8 we're dealing with here?

9 MR. TRAFICANT: We're looking for Mr. Tim
10 Christay at this particular point, and that will be all the
11 witnesses I will have.

12 THE COURT: Okay. We're going to give you a
13 break now. This is going to be 30 minutes.

14 (Jury out at 10:05 a.m.)

15 THE COURT: Mr. Morford.

16 MR. MORFORD: Your Honor, I just wanted to
17 note we've been here since 8:30 this morning. We have not
18 received any new documents. If there are new documents,
19 we'd like to have them to look them over during the break,
20 and if there are no new documents, then any matters could
21 have been asked of Mr. Robertson, and I would ask that if
22 there are new documents, we be given them now.

23 MR. TRAFICANT: Your Honor, I just had them
24 faxed to me before I came into court here this morning.
25 I'm preparing the documents and giving them to them after

1 the break, and they will have the documents relative
2 thereto.

3 Mr. Robertson has been contacted on his answering
4 machine, and I'm hoping he's here and I'll be prepared to
5 take this matter up after the half-hour break. But I would
6 ask for a side-bar after that half-hour break for
7 particular matters that deal with those issues. I have
8 received information from another bank of four other
9 accounts of Mr. Allen Sinclair, and there were 15 banks
10 that were subpoenaed.

11 As you know, only Home Savings & Loan
12 responded and still said they had a continuing search.
13 Now, I was notified by fax --

14 THE COURT: They also said that their search,
15 if completed, would take two and a half months,
16 Congressman.

17 MR. TRAFICANT: Yes, I know that, Your Honor,
18 but I am now in receipt at least the acknowledgment of four
19 accounts of Mr. Sinclair in another bank that came from
20 Indianapolis, Indiana, so evidently these legal departments
21 take a lengthy time.

22 I had stated, and it was the testimony of
23 Mr. Robertson, that there were numerous subpoenas sent to
24 many banks, and there would be probably a flow of that
25 material over a period of time if there were anything at

1 all.

2 I've been notified, to the best of my knowledge, that
3 most of these banks do take time. Home Savings & Loan did
4 have some documents, but did not have deposit documents
5 available for us.

6 So now I've received this, I believe that we have the
7 copies, and we can present it to them when I return on the
8 break. But I want to proffer --

9 THE COURT: Do you also have the witness
10 here?

11 MR. TRAFICANT: I'm hoping that the witness
12 is here. That's -- he was left a message on his answering
13 machine.

14 THE COURT: Well, you know, if the witness is
15 not here, there's no reason for everybody to be reviewing a
16 bunch of documents.

17 MR. TRAFICANT: Well, this is what I'm
18 attempting to do, but I would like to proffer for the
19 record --

20 THE COURT: No. Wait a minute. We're going
21 to let the government respond, as we always do, to what
22 you've just presented us with.

23 MR. MORFORD: The response is this, Your
24 Honor: Congressman Traficant has known since May of 2001
25 that the Allen Sinclair kickbacks were a central charge in

1 this case. He has had the ability to subpoena records
2 since that time. The fact that he waited until three or
3 four weeks ago to subpoena the records is his fault, not
4 the Court's, not the jury's, not the prosecution's.

5 My only point is this: That he has documents right
6 now in his possession that he should immediately give to us
7 under Rule 16 so we can begin looking at them and not wait
8 any further. There's no reason to wait until after the
9 break.

10 MR. TRAFICANT: We have not had time to
11 corroborate fully what I had received.

12 THE COURT: Well, you don't have to
13 corroborate anything.

14 MR. TRAFICANT: And I will do that on the
15 break.

16 THE COURT: You can give the documents to the
17 government.

18 MR. TRAFICANT: I will give them to them.

19 THE COURT: Congressman, you can give the
20 documents to the government because you've received them.
21 That's what reciprocal discovery requires that you do. So
22 do it now. We'll sit here and wait while you go and get
23 the box of documents, and you bring it down here, and we'll
24 give copies to the government.

25 Now, who is the person named Christay?

1 MR. TRAFICANT: Christay. He does some work
2 on -- did some work on the farm for pay.

3 (Pause.)

4 MR. TRAFICANT: I have been instructed
5 Mr. Robertson is on an investigation regarding a death
6 inquiry or whatever.

7 THE COURT: Are those the records?

8 MR. TRAFICANT: That's what I received.

9 THE COURT: Very well. Okay. We will recess
10 now and give them time to look at them, and we'll take
11 another -- I don't know where we are into our 30 minutes
12 but --

13 MR. TRAFICANT: I would request that we break
14 until -- what time is it?

15 MR. SMITH: It is 10:17, sir.

16 MR. TRAFICANT: I would request we break for
17 the morning.

18 THE COURT: Oh, no, we can't do that. We'll
19 be back here.

20 MR. TRAFICANT: You gave him an 25 extra
21 minutes yesterday for a two-hour opportunity. Now I'm
22 asking for the same reciprocity.

23 THE COURT: We also sent the jury home
24 because we ran out of witnesses yesterday.

25 What we're going to do is come back at quarter of

1 11:00, which gives you now almost 30 minutes.

2 (Recess had.)

3 (Jury in at 10:52 a.m.)

4 THE COURT: Ladies and Gentlemen, as I did
5 following one other witness who was called for a special
6 purpose, I want to give you a special instruction regarding
7 the testimony that you heard right before break. "The
8 testimony you just heard regarding Mr. O'Nesti's statement
9 can only be considered by you when you assess the
10 credibility of Jacqueline Bobby and/or Grace Kavulic as to
11 their testimony regarding other statements from Mr.
12 O'Nesti.

13 "The statement you just heard can only be used to
14 impeach the credibility of Ms. Bobby or Ms. Kavulic and is
15 not evidence of anything else."

16 That's because it was brought back, the witnesses
17 were brought back for a special purpose.

18 Okay? Congressman, your next witness?

19 MR. TRAFICANT: Linda Kovachik.

20 THE COURT: She's already appeared in this
21 courtroom on --

22 MR. TRAFICANT: This is a different matter.

23 THE COURT: Is it something that --

24 MR. TRAFICANT: Yes.

25 THE COURT: Tell me what the different matter

1 is.

2 MR. TRAFICANT: She received documents last
3 night and delivered them to me.

4 MR. MORFORD: I would object to relevance.

5 MR. TRAFICANT: Relative to bank statements
6 of Mr. Sinclair from another bank. And I want her to, in
7 fact, testify that she received the fax and delivered them
8 to me, and these are those documents that she delivered to
9 me of another bank having four accounts of Mr. Allen
10 Sinclair.

11 THE COURT: Do you want to be seated so Mr.
12 Morford can respond?

13 MR. TRAFICANT: Absolutely.

14 MR. MORFORD: First of all, Your Honor, the
15 cover letter to these documents indicates these were
16 received by the Congressman by a cover letter dated March
17 28th, 2002. There's a fax at the top that says, April 2nd
18 at 11:30. We never received these until about 15 minutes
19 ago.

20 But I can tell you that the vast majority of the
21 documents we received have nothing to do with Allen
22 Sinclair whatsoever. They have to do with a James C.
23 Sinclair, and his wife, Kimberly Sinclair. They have
24 different Social Security Numbers. They live in New
25 Jersey. They have different birth dates. And we've

1 confirmed that these documents have nothing to do with
2 Allen Sinclair whatsoever.

3 Second, this witness testifying as to when she got a
4 fax has no relevance to the jury unless the documents are
5 admitted in some proper manner and have some relevance to
6 this case. This kind of testimony is totally irrelevant.

7 MR. TRAFICANT: Your Honor, we admit that
8 these do contain some pages of a different Kimberly A.
9 Sinclair. We are in the process of investigating why they
10 sent us this matter. But they do show a Sinclair, Allen,
11 with four accounts, which is not in question.

12 We told the prosecution that this is all we got from
13 them, but there are four separate accounts, including an
14 auto lease, an IRA --

15 THE COURT: Where are these accounts held?

16 MR. TRAFICANT: These came from Bank One.
17 Now, we've only had a witness here from Home Savings &
18 Loan, and there are 15 subpoenas and we've had five from
19 Bank One --

20 THE COURT: Congressman, just a minute.
21 We're trying to establish if we have anybody's records here
22 who was involved in this case. You say there are some
23 there that involve Allen Sinclair.

24 MR. TRAFICANT: Four. We're not contending
25 that the remainder -- we don't know why it was sent, and

1 we're investigating if this \$150,000 mobile home has
2 anything to do with his wife under a fraudulent act, quite
3 frankly.

4 THE COURT: That's something you could take
5 up somewhere else, not here.

6 MR. TRAFICANT: But the fact is, the fax was
7 received by an assistant who could testify that this
8 document came from Bank One, and I want --

9 THE COURT: That doesn't take us anywhere.
10 The fact that you got a document at this date doesn't take
11 us anywhere. She's not from the bank. She's not in a
12 position to testify.

13 MR. TRAFICANT: But she can introduce the
14 fact that she received this, and this document could be
15 then placed on the record.

16 THE COURT: Well, you can --

17 MR. MORFORD: I object to this, Your Honor,
18 because the Congressman is trying to suggest to this jury
19 that a vehicle application loan with a bank from somebody
20 in New Jersey that happens to have the last name Sinclair
21 is somehow fraudulent. That's just not true.

22 MR. TRAFICANT: We're not doing that.

23 MR. MORFORD: Second, the Congressman has had
24 since the time of the indictment in May, 2001 to subpoena
25 documents, and he's suggesting to this jury that there's

1 documents that he's not gotten. The bank has indicated
2 that for most of these accounts, there aren't even any
3 accounts or records, and so I object to any of this because
4 it's totally irrelevant.

5 MR. TRAFICANT: Your Honor, I explained to
6 the prosecutor --

7 THE COURT: This witness cannot be recalled
8 for this purpose, Congressman.

9 MR. TRAFICANT: Well, I want to respond
10 though at least.

11 THE COURT: Well, no. You've done enough
12 now.

13 MR. TRAFICANT: You let him have the last
14 word.

15 THE COURT: Well, excuse me, sir.

16 MR. TRAFICANT: I'm only questioning.

17 THE COURT: This is your witness you are
18 proposing. I am saying this witness is not in a position
19 to testify as to this matter.

20 Call your next witness, Congressman.

21 MR. TRAFICANT: I now call for a side-bar. I
22 have no other witness and call for a side-bar relative to
23 proffer and law.

24 THE COURT: You'll be able to do proffering
25 after the jury leaves for today. Call your next witness.

1 MR. TRAFICANT: I have no other witnesses.

2 THE COURT: Then, Congressman --

3 MR. TRAFICANT: Attorney Cascarilla will not
4 respond.

5 THE COURT: Congressman, do you rest?

6 MR. TRAFICANT: Attorney Rotatori will not
7 respond.

8 THE COURT: Congressman, do you rest?

9 MR. TRAFICANT: Every evening.

10 THE COURT: Thank you. I've warned you
11 repeatedly that like every other person, you have a
12 responsibility to have your witnesses here for a normal
13 trial day. Don't interrupt me.

14 MR. TRAFICANT: Your Honor --

15 THE COURT: From 9:00 until 4:30.

16 The last time I warned you about that was last night,
17 when you said you didn't know who you were going to call.

18 MR. TRAFICANT: They're ducking me.

19 THE COURT: Congressman, you are not the only
20 person who has a stake in this trial. These jurors and
21 alternate jurors, some of whom travel almost five hours a
22 day in order to be at this Court and serve as part of the
23 Court, have been consistently here on time. It's over nine
24 weeks now. They've been attentive. They've been ready to
25 do their work, and so is everyone else in this courthouse

1 who has a role in your trial.

2 These 17 Ladies and Gentlemen on this jury and the
3 alternates have put aside their families, their businesses,
4 and all their other activities in order to come here and
5 serve justice under law. That's what a trial is about.
6 It's not about anything different than that.

7 We're here to give you a fair trial and give
8 the government a fair trial, but these men and women, I
9 will not permit them to sit here idly for the balance of
10 the day.

11 Yesterday we sent them home early because you didn't
12 have witnesses. They will not be permitted to sit here
13 idly while you dillydally and delay.

14 You have a constitutional right not to testify. If
15 you want to testify in this case, then please proceed.
16 This is the time. We need witnesses on the stand.

17 MR. TRAFICANT: I want to respond. You have
18 eliminated 50 percent of my witnesses from testimony. You
19 have denied them the right to take the stand for particular
20 objections from the prosecution. They've taken seven of
21 the nine weeks. I've been here only two weeks, and I now
22 want to proffer for the record.

23 If you give me a 15-minute examination of Mr.
24 Morford on misconduct, I'll take the stand.

25 MR. MORFORD: Your Honor, I object to this.

1 THE COURT: If you would read the Court's
2 rulings, you would find out yesterday afternoon we ruled on
3 that motion.

4 MR. TRAFICANT: Well, I have matters to
5 complete with the Court at this point that deal with
6 proffers.

7 THE COURT: We'll do that after --

8 MR. TRAFICANT: I will not keep the jury any
9 more minutes.

10 THE COURT: I'm sorry, but you're not in
11 charge of the jury here.

12 MR. TRAFICANT: I don't plan to keep them
13 here. But for him to state --

14 THE COURT: You can proffer later. But I can
15 only conclude now that with the entire balance of the day
16 stretching out in front of us, you have nothing further to
17 present in this case unless you want to testify, which is
18 your right to do. This would be the time to do it.

19 MR. TRAFICANT: Your Honor, people involved
20 in this case that I have subpoenaed have ducked subpoenas.
21 Those that I have brought in --

22 MR. MORFORD: Your Honor, I object to this.

23 MR. TRAFICANT: -- have not been allowed to
24 testify.

25 MR. MORFORD: To say this in front of the

1 jury --

2 THE COURT: I have to conclude --

3 MR. TRAFICANT: You have eliminated half my
4 witnesses from testifying.

5 THE COURT: Congressman, Congressman,
6 Congressman.

7 MR. TRAFICANT: No, hear me. You said I've
8 dillydallied. I take objection to that for the record. I
9 brought witnesses here you did not allow to take the stand.

10 THE COURT: Some of them we didn't allow and
11 many of them we did.

12 MR. TRAFICANT: Not many; most of them you
13 did not.

14 THE COURT: How much time do you want for
15 your closing arguments?

16 MR. TRAFICANT: I don't think that's a matter
17 for the jury.

18 THE COURT: How much time do you want for
19 your closing arguments?

20 MR. TRAFICANT: Whatever you think is fair.
21 I say this: I would recommend two hours.

22 THE COURT: Are you going to testify?

23 MR. TRAFICANT: I will not take the stand at
24 this point unless Mr. Morford takes the stand on
25 prosecutorial misconduct.

1 I will take the stand if Morford takes the stand on
2 prosecutorial misconduct.

3 THE COURT: Congressman, one of the things
4 I've repeatedly asked you not to do is when the Court has
5 ruled, not to bring it up.

6 MR. TRAFICANT: Then don't ask me. Quite
7 frankly, I've only had the jury here two weeks. They had
8 them here seven weeks with a bunch of paper.

9 THE COURT: How much time do you want for
10 closing argument? You're not going to do it right now.

11 I have to know if you are going to take the stand.
12 Are you?

13 MR. TRAFICANT: I'm not sure yet.

14 THE COURT: We have a jury here.

15 MR. TRAFICANT: If Mr. Morford is going to
16 accept my stipulation.

17 THE COURT: I've already ruled on that,
18 Congressman. If you don't read the Court rulings, maybe
19 we'll read it out to you now. Just sit down and I'll read
20 you the ruling we issued on that yesterday.

21 MR. TRAFICANT: Hold on. I may have a
22 witness.

23 THE COURT: Do you have a witness?

24 MR. TRAFICANT: No. I have a question.

25 What -- Your Honor, do you have right at this point to stop

1 my trial? Under what law?

2 THE COURT: Maybe you should bring the person
3 forward who is presenting the question.

4 MR. TRAFICANT: No. She is an assistant who
5 takes notes for me. I think she's given me a good question
6 to ask. What right do you have to stop my trial and in
7 front of this jury ask me these questions?

8 THE COURT: I have the right to control the
9 proceedings in this case, and you've been warned
10 repeatedly.

11 MR. TRAFICANT: Do you have the right to stop
12 my trial?

13 THE COURT: I have the right to ask you
14 whether you are going to testify, and if you are not, to
15 close the case.

16 MR. TRAFICANT: You have asked me, in fact,
17 if I had any other witnesses.

18 THE COURT: I have.

19 MR. TRAFICANT: I told you I had subpoenaed
20 them. You have said I dillydallied, but you have not
21 allowed half of my witnesses to testify.

22 Linda Kovachik --

23 THE COURT: That is, first of all, not
24 correct; and, secondly, it isn't gaining us anything.

25 MR. TRAFICANT: Linda Kovachik --

1 THE COURT: How much time do you want for
2 your --

3 MR. TRAFICANT: Linda Kovachik is in the same
4 position as Terlecky and Johnson, yet you did not allow her
5 to testify.

6 THE COURT: You had her on the stand, sir.

7 MR. TRAFICANT: You did not allow her to
8 testify on the hearsay exception.

9 MR. MORFORD: Your Honor, I object to these
10 falsehoods being thrown out here in front of the jury.

11 MR. TRAFICANT: Then let's remove the jury
12 and discuss law. I have not recommended --

13 THE COURT: We will release the jury. That's
14 what we'll do. We'll release the jury for the balance of
15 the day. It's now, what time, 11:00 in the morning.

16 MR. TRAFICANT: That's fine.

17 THE COURT: Okay. We'll release the jury for
18 the balance of the day, and when you come in tomorrow,
19 bring two or three days of clothing with you and other
20 personal things that you need.

21 MR. TRAFICANT: Thank you.

22 (Jury out at 11:04 a.m.)

23 (Recess had.)

24 THE COURT: Congressman, you have a proffer?

25 MR. TRAFICANT: Yes. The proffer I have is a

1 letter received from James Kerchum, who was subpoenaed.

2 I'm going to read it for the record:

3 "I, James A. Kerchum, April 2, '02, residing
4 at 1545 Kale Adams Road, Southwest Warren, Ohio, 44481, do
5 hereby swear to the following to be fact: One, I was
6 subpoenaed to the Federal Courthouse in Cleveland, Ohio, on
7 April 2, 2002, to testify in the case of U.S. versus James
8 A. Traficant, Jr.

9 2: As required by law, I did, in fact, appear and
10 testify in Judge Wells' courtroom in the Federal Building,
11 in Cleveland, Ohio, on this same date.

12 "3: At approximately 3:00 p.m. on this same date, I
13 was notified by my probation officer, Kellin Strong, that I
14 was in violation of my probation for complying with said
15 subpoena without first requesting permission from Federal
16 Judge Peter C. Economus." That's E C O N O M U S. "I
17 did, in fact, notify the probation office in Youngstown,
18 Ohio, that I was subpoenaed and had appeared in Federal
19 Court, and that I had made three prior attempts to notify
20 my probation officer, Kellin Strong, that I was required to
21 make an appearance in said case.

22 "4: Officer Strong advised me that if I had not
23 complied with the said subpoena, that I would have been in
24 violation of probation and/or other laws pursuant to such
25 matters.

1 "5: Officer Kellin Strong also advised me, however,
2 that because I did comply with said subpoena, that I was
3 still in violation of probation.

4 "6: I assert at this time that Federal Probation
5 Officer Strong and/or Federal Judge Peter C. Economus is
6 guilty of witness tampering.

7 "7: On previous occasions, officer Kellin Strong
8 said to me, 'Just stay away from Traficant and you'll be
9 okay.'

10 "8: My sister, Carol Anne Kerchum, was a
11 witness to the statement in paragraph 7 made by Officer
12 Kellin Strong."

13 This is not -- and it did not have time to be
14 notarized. I will have it notarized, but wanted it
15 proffered for the record.

16 Second of all, I have another issue.

17 THE COURT: Let's deal with this one first.
18 It seems to me the person to take this up with is Judge
19 Economus, and this gentleman can, if he needs it, get some
20 kind of a signed statement or something from my clerk that
21 he actually was here appearing in a court matter. We'd be
22 happy to provide that to him.

23 MR. TRAFICANT: Now, the second issue, in
24 front of the jury I object to statements made in front of
25 the jury relative to whether or not I would testify,

1 relative to whether or not I was to rest, and these matters
2 have always been held in side-bar without the jury's
3 presence.

4 And for the record now I proffer the
5 following: That the following witnesses were not allowed
6 to testify: Linda Kovachik, Jim Kerchum, Fred Hudach,
7 Russell Saadey, Harry Manganaro, Horace Chesney, Mike
8 Antonoff. Johnson and Terlecky were allowed to testify in
9 the ninth week, when defendant had only two weeks of a
10 trial, being blamed for dillydallying.

11 Finally, Bucci, through Rotatori, can't be contacted.
12 Cascarilla has become sort of scarce. Tim Chesney is in a
13 truck somewhere in Florida, and T. C. Ready Mix, their
14 custodian of records is on vacation.

15 Now, I want to proffer for the record that you voir
16 dired Johnson, Terlecky, Kovachik, Kerchum, Hudach, Saadey,
17 Antonoff, and Manganaro. And also for the record, that you
18 used the hearsay exception to allow the testimony of
19 Johnson and Terlecky, both having difficulties, Johnson
20 being with the DUI, Terlecky having a former prior record,
21 but not allowing Linda Kovachik, who basically under the
22 same set of circumstances had the same happenstance
23 conversation with O'Nesti.

24 In my opinion, for the record, you've allowed the
25 government to have some opportunity to have some witness

1 take the stand for the Congressman who they could impeach
2 easily, but let alone a woman whose credibility is
3 impeccable.

4 Now, having said that, these witnesses that you have
5 denied me the opportunity to examine would have taken at
6 least two to three hours each pursuant to the types of
7 information that was being solicited relative to my case.

8 You've ruled on it. You said in public now several
9 times, you poisoned this jury relative to whether or not I
10 would take the stand. That is something that is in the
11 sole province of myself.

12 Now, when I gave this to the government, I
13 told them that we're in the process of investigating them.
14 We don't know if this is the Allen Sinclair from Youngstown
15 or not, and I told them that when we gave it to them.

16 Now, if it's not, it's not. But we have 15
17 outstanding, and I want Mike Robertson brought in here.

18 It may be there just may be nothing else, but in my
19 opinion, you have been unfair in this trial, and you have
20 now poisoned the jury by bringing up closing arguments in
21 front of the jury, asking the amount of time that's going
22 to be spent for closing arguments, whether I was going to
23 rest. You have no right, no right.

24 You could put me in jail for not having a
25 witness here if you want, you can fine me if you want, but

1 you have no right to poison a jury pool that will make a
2 decision on the matter of such a significant criminal case.

3 Now, having said that, I will be offering witnesses
4 tomorrow morning and will continue my case.

5 Now, I want to stipulate further for the
6 record that I will testify on both trials if Mr. Morford
7 opens himself up for the prosecutorial misconduct that you
8 said I have flippantly given to this Court, when Mr. Detore
9 said he felt like blowing his brains out and is an indicted
10 co-conspirator.

11 Now, I want to know that. You didn't say that to the
12 jury. You just made it look like to the jury I'm afraid to
13 face the facts here. You've poisoned this jury for the
14 record.

15 Now, do we stipulate? Do we have an agreement that
16 I'll testify and you'll let me examine you, Mr. Morford?
17 Yes or no.

18 THE COURT: I already ruled on that,
19 Congressman. I already ruled on that.

20 MR. TRAFICANT: And why have you ruled on
21 that?

22 THE COURT: Because it was presented to me by
23 you in a motion, and I ruled on it yesterday.

24 MR. TRAFICANT: Why didn't you explain that
25 to the jury when you just made it look like I was unwilling

1 to take the stand? I put conditions on taking the stand.

2 This man, for the record, has violated the rights of
3 Henry Nemenz and Robin Best, David Sugar, Pete Bucheit,
4 Henry DiBlasio, and others named in my motion, Richard
5 Detore. You've allowed J.J. Cafaro, who admitted to be a
6 perjurer on the stand, paid for the testimony of Al Lange,
7 and allowed it to remain in.

8 If that was my witness, you'd have scolded me in
9 front of this jury and made me look like some jackass truck
10 driver's son.

11 Now, I will rest when I'm ready to rest, and this
12 trial will stop when I'm ready to stop.

13 Now, you may have 220 other cases, but you have a
14 right to perform the justice here, and you're now presiding
15 over this case, not those other 220.

16 Now, if you want to suspend this for a couple days,
17 go right ahead. But I'm going forward tomorrow morning
18 with my case.

19 I want to check Social Security Numbers. I want to
20 know if there's any bank fraud. And that very well might
21 not be Mr. Sinclair. I did not maintain it was.

22 And in fact, we are pursuing the investigation, which
23 evidently they have done very little of, Your Honor.

24 Now, having said that, I am very disappointed in the
25 Court, because I think and believe in my heart you made a

1 willful, knowledgeable statement to poison the jury pool
2 relative to my taking the stand or not, and that is
3 privileged, and that is not to be mentioned in front of a
4 jury, and you have never mentioned anything in front of a
5 jury. It's always been side-bar when it dealt with
6 attorney matters.

7 This today you did. You did that today. And I
8 believe you violated my rights when you did it.

9 In fact, I make a motion right now for mistrial.

10 THE COURT: Would you like to respond to any
11 of this?

12 MR. MORFORD: Yes, Your Honor.

13 First of all, the record speaks for itself. And the
14 fact that Congressman Traficant keeps choosing to rehash
15 these same facts over and over and over doesn't change
16 anything.

17 Could you sit down while I speak, please?

18 MR. TRAFICANT: I prefer to stand.

19 THE COURT: Well, you'll have to sit.

20 MR. TRAFICANT: Is that an order of the
21 Court?

22 THE COURT: Sit down. It's an order. Please
23 sit.

24 MR. TRAFICANT: Then I'll sit.

25 MR. MORFORD: The law is that the Court has a

1 right to manage a trial, to manage.

2 THE COURT: Let's wait while the Congressman
3 sits.

4 Thank you.

5 MR. MORFORD: To manage its case load, to
6 manage its docket.

7 The Court has given Congressman Traficant latitude
8 that no party would usually get in a case. The Court has
9 bent over backwards to accommodate him. The Court at the
10 time of arraignment went to great pains to try to explain
11 to Congressman Traficant some of the perils he was going to
12 face if he chose to go without an attorney.

13 In a rude way, he told the Court he didn't
14 want to hear it, he knew what he was doing.

15 Congressman Traficant, although he claims to be pro
16 se, the evidence in this case shows he's had representation
17 from Mr. Colucci. He's had a legal adviser --

18 MR. TRAFICANT: Objection.

19 MR. MORFORD: -- in court every day.

20 MR. TRAFICANT: Objection.

21 MR. MORFORD: He has known about these
22 charges --

23 THE COURT: Overruled.

24 MR. MORFORD: -- since May of 2001. He's had
25 subpoena power to subpoena documents since that time. He

1 could have, as the government did weeks and weeks before
2 trial, put people under subpoena, give them the date of the
3 trial, and tell them they would have to be available during
4 certain times in the trial.

5 The Court has patiently told him day after day he has
6 to have witnesses here. He cannot run out of witnesses.
7 He refused to tell the Court who his witnesses would be.

8 He never had enough witnesses here on any day. There
9 were times the government had 10 or 12 people, some of them
10 out of town, sitting in that room for four days getting
11 very upset because we told them we cannot leave a jury
12 sitting in the box --

13 MR. TRAFICANT: Objection.

14 MR. MORFORD: -- doing nothing.

15 THE COURT: Overruled.

16 MR. MORFORD: And we explained to those
17 witnesses that while this may be an inconvenience for you
18 for three or four days, it's a major inconvenience for
19 these people to put their lives on hold for eight to ten
20 weeks, and we have to take their inconvenience over yours.

21 And no matter how long this trial went, we never ran
22 out of witnesses. And in fact, there were times when we
23 had witnesses in that room because Congressman Traficant
24 did a four or five-hour cross-examination, which he has a
25 right to do. But the point is, day after day, no matter

1 how long Congressman Traficant has been on his case, day
2 after day he ran out of witnesses.

3 This Court gave him notice. He knew he had
4 to have witnesses today, and he came in with one witness.
5 That was his choice.

6 The Court has made it clear that it was not going to
7 allow him to continue to do this. He has no witnesses.
8 He's indicated to the Court that whatever witnesses he
9 would have would probably have no relevance to this matter
10 anyway. The Court is certainly within its rights. The
11 record speaks for itself.

12 There has been no violation of his Constitutional
13 rights.

14 And the Court should move on. We should have closing
15 arguments.

16 MR. TRAFICANT: Objection.

17 MR. MORFORD: And this case should be over.

18 MR. TRAFICANT: Now I'd like to also respond.

19 THE COURT: Okay.

20 MR. TRAFICANT: I do have a witness for
21 tomorrow, and I plan to bring that witness.

22 THE COURT: Who is that?

23 MR. TRAFICANT: And I want to --

24 THE COURT: Who is that witness?

25 MR. TRAFICANT: That will be Mr. Robertson.

1 THE COURT: The same one you brought today.

2 MR. TRAFICANT: Relative to an ongoing
3 subpoena. And if I can, the fella from -- Mr. Chesney and
4 the fella from Ready Mix, I'll have them here. And whether
5 or not I testify will be my decision.

6 Finally, I want to read into the record the motion to
7 testify with conditions since you made that a matter of
8 public record in front of the jury.

9 THE COURT: Actually, it is public record.

10 MR. TRAFICANT: I want to read it for the
11 record. I want to proffer it for the record orally.

12 THE COURT: You can do that right now. You
13 can read the whole thing out loud. But let me ask you a
14 question: Did you ever read the order that the Court
15 issued regarding that?

16 MR. TRAFICANT: Yes, I did, and that's why
17 I've offered this motion, and I want to proffer it for the
18 record.

19 THE COURT: Okay. Very well. You can read
20 the motion.

21 MR. TRAFICANT: "U.S. District" --

22 THE COURT: Although it is part of the record
23 of the case.

24 MR. TRAFICANT: "U.S. District Court,
25 Northern District of Ohio. USA, plaintiff, versus James A.

1 Traficant, Jr., pro se defendant," filed April 2, 8:39 a.m.

2 "Clerk, U.S. District Court, Northern
3 District of Ohio, Cleveland. Case number 4:01CR207.
4 Honorable Judge Lesley Wells.

5 "Pro se defendant motion to testify with conditions.
6 Pro se defendant will only testify subject to thorough and
7 complete examination on any and all matters, including
8 those allegations that are continuously referred to in the
9 1983 trial, under the following conditions:

10 "1: My testimony is contingent upon the
11 following: The Court allow me to examine AUSA Morford and
12 others, known or unknown to me, at this time regarding the
13 following:

14 "1. FBI Agent Anthony Speranza's crime of
15 rape.

16 "2. Richard Detore's extortion,
17 intimidation, in violation of his civil rights.

18 "3: Cafaro perjury in Chance trial and
19 threats to indict his daughter and audit the Cafaro
20 Company.

21 "4: Sinclair extortion and threats to indict his
22 wife in KAS building fraud activity.

23 "5: Subornation of perjury in the Russell Saadey,
24 Jr. case regarding testimony of Harvey and Amedia.

25 "6: Violation of Russell Saadey's civil rights

1 regarding actions of one Mr. Woolsey.

2 "7. Extortion, intimidation and threats to Henry
3 Nemenz and Robin Best, including violations of their civil
4 rights.

5 "8: Violation of the civil rights of Sandy and Ori
6 Ferrante, including the inducement of fear, perpetrating
7 the serious health problems that have resulted as a cause
8 of such behavior.

9 "9: Subornation of perjury of William Pearch.

10 "10: Violations of the civil rights of Sam
11 Traficanti and his son, Anthony, of my staff.

12 "11: Illegal raid of B & T Express Trucking Company
13 to destroy their business with willful disregard for same.

14 "12: Extortion and bribery of Jim Sabatine by
15 threatening to, quote-unquote, 'Put him in jail for ten
16 years and take your \$15 million.'

17 "13: Extortion of Mr. Pete Bucheit with threats to
18 indict his son and daughter.

19 "14: False imprisonment and civil rights violations
20 of FBI, quote-unquote, 'Special Agent Informant, Informant
21 Agent Jim Kerchum,' known as Cheese One.

22 "15: Extortion and intimidation of Henry and Norma
23 DiBlasio causing major health problems.

24 "16: Extortion and subornation of perjury of
25 David Sugar by threatening to indict his wife and son.

1 "17: Violation of the civil rights of the Fred
2 Hudach family regarding the false imprisonment of their
3 son, Ben.

4 "18: Collusion and conspiracy with former USA
5 Attorney Stewart Mandel to convict Michael Terlecky to
6 protect mob boss Lennie Strollo.

7 "19: Violations of civil rights of Charles O'Nesti
8 by applying pressure, willfully and with intent, to extort
9 Mr. O'Nesti while literally on his death bed.

10 "20: Threats and intimidation of Attorney Mark
11 Colucci by threatening to, quote-unquote, 'Get your law
12 license.'

13 "21: Threats to Mike Antonoff and obstruct justice
14 by ordering FBI to, quote-unquote, 'Follow Antonoff and
15 find out who he will call at trial,' he being the defendant
16 pro se.

17 "22: Suborning the perjury of FBI Agent Speranza in
18 the Debbie Campbell case.

19 "23: Obstructing justice and violating the civil
20 rights of Debbie Campbell and another woman now under
21 investigation by me.

22 "24: Obstructing justice and attempting to extort
23 Greg Tyson.

24 "25: Obstructing justice and threats to Brian
25 Kidwell and family.

1 "26: Suborning the perjury of Richard Rovnak.

2 "27: Extorting George Buccella by threatening to
3 expose an FBI investigation of Buccella regarding the,
4 quote-unquote, 'Fixing of a DUI case with Judge Bailey'
5 involving a \$2,500 payoff, and thus suborning perjury of
6 Mr. Buccella about violating his civil rights since statute
7 had expired.

8 "28: Intimidation of Dennis Palmer by FBI Agent
9 Pikunas.

10 "29: Perjury before the Court that government has no
11 tapes on Traficant.

12 "Pro se defendant will open up myself to both the
13 1983 trial and this 2002 trial subject to above conditions
14 and with the understanding that any and all tapes I have
15 made regarding this case be admitted into evidence,
16 including DiBlasio, Detore, Manganaro, Chance, Best,
17 Bucheit, Terlecky, and others not announced herein.

18 "Respectfully submitted. Certificate was made on
19 April 2, 2002, to the U.S. Attorneys, filed with the Clerk
20 of Courts for the Northern District of Ohio, Cleveland,
21 Ohio."

22 My case does not rest, and I will continue tomorrow.

23 THE COURT: You don't have to respond, but if
24 you want to, you may.

25 MR. MORFORD: No, Your Honor. The only thing

1 I want to respond to is his constantly telling the Court
2 what he's going to do and what he's not going to do.
3 That's the Court's province.

4 THE COURT: Right.

5 MR. MORFORD: He was supposed to have
6 witnesses here. Mr. Robertson's testimony would be
7 entirely irrelevant.

8 He's shown no new evidence and can show no new
9 evidence that would justify bringing him back.

10 MR. TRAFICANT: We are
11 investigating -- Mr. Robertson is investigating if these
12 are, in fact, the same Allen Sinclair and if there's any
13 bank fraud, and if they're not, they're not. We have the
14 right since we received them this morning.

15 Now --

16 THE COURT: Wait, wait, wait, wait. You just
17 made your proffer by reading the entire motion that you
18 filed yesterday morning, and I am now going to read the
19 entire order that I filed later in the day.

20 MR. TRAFICANT: Go right ahead.

21 THE COURT: After I sent the jury home
22 because we had no more witnesses. So this was filed a
23 little after 3:00 yesterday.

24 "Before the Court is Defendant Traficant's motion
25 filed today in this ninth week of trial to impose

1 approximately 30 conditions on any testimony he may give.

2 "The 'bargain' he seeks to strike would, among other
3 things, nullify many of this Court's prior orders which
4 were entered after full opportunity for both sides to
5 address the issues.

6 "Defendant Traficant has a constitutional right to
7 choose whether or not to testify on his own behalf.
8 However, like every other defendant in a criminal case, if
9 he chooses to testify, Defendant Traficant may not place
10 any conditions on his testimony. Defendant Traficant's
11 motion to condition any testimony he may give is denied."

12 Now, we have a matter of some exhibits. You wanted
13 to put some things into evidence?

14 MR. TRAFICANT: I want to put nothing into
15 evidence at this time except the Kerchum letter, and it is
16 not notarized.

17 THE COURT: Okay.

18 MR. TRAFICANT: But I will offer it.

19 THE COURT: I should rule on a couple of
20 things that were outstanding.

21 MR. MORFORD: Your Honor, before you do that,
22 I object to the Kerchum letter being put into evidence, as
23 in evidence, that would go to the jury.

24 THE COURT: Right. And I think he
25 acknowledges that.

1 MR. TRAFICANT: No, I don't acknowledge that.

2 THE COURT: Are you offering it? I

3 thought --

4 MR. TRAFICANT: I am going to offer it, and

5 if you want it notarized, I'll need time to have it

6 notarized, but I want to offer it and I have a defense

7 number on it.

8 THE COURT: Okay. Give us the defense

9 number.

10 MR. TRAFICANT: JJ dash Tamper parentheses 1.

11 THE COURT: Could you hand it up, sir?

12 MR. TRAFICANT: I'd be honored to.

13 THE COURT: Did you say JJ dash tampering?

14 MR. TRAFICANT: No. I said, JJ dash tamper,

15 T A M P E R, parentheses 1.

16 THE COURT: Have you seen this?

17 MR. MORFORD: He just read it, Your Honor.

18 THE COURT: Okay. I'll hand it down.

19 MR. TRAFICANT: Do you want a copy of it?

20 MR. MORFORD: Well, if you're offering it as

21 an exhibit, we would need a copy with the exhibit number on

22 it.

23 MR. TRAFICANT: I have one for you. Let me

24 give this to the Court.

25 MR. MORFORD: And Your Honor, we would object

1 to this on the grounds of hearsay and relevance.

2 THE COURT: Right.

3 MR. TRAFICANT: What's hearsay about it?

4 It's a probation officer's letter threatening to put a guy
5 in jail for answering a subpoena. Now, come on.

6 THE COURT: Congressman, you can suggest to
7 Mr. Kerchum, if you wish to, that he should take this up
8 with Judge Economus or do something somewhere else, but
9 it's not part of this case.

10 MR. TRAFICANT: You did not allow him to
11 testify in my case, and that is the issue of why I'm
12 putting it into the record. And I believe it has a right
13 to be placed on the record since it implies the
14 government's intervention in this case.

15 THE COURT: If you think that he needs
16 something from this Court, we'd be happy to supply
17 something that says he was here at the time he was here.
18 The transcripts will reflect it, and we can sign something.

19 MR. TRAFICANT: Would that be a
20 recommendation that he not go to jail because he showed up
21 at the Traficant trial?

22 THE COURT: No.

23 Okay. Let me go on with some other things. You had
24 two photographs, HA-60 and HA-1, and I had to go back and
25 review the transcripts on those in order to see -- they

1 were photographs identified by one of your witnesses,
2 Marchese, Marchese. He took these photographs the other
3 day. I mean they were recent photographs.

4 MR. TRAFICANT: What are their numbers?

5 THE COURT: HA-60 and HA-1.

6 MR. TRAFICANT: And what is the problem?

7 THE COURT: Well, you offered them for
8 admission, and I had to go back and review the transcript
9 to see whether or not they could go before the jury, and
10 I'm going to let them come in over objection by the
11 government.

12 In addition, there is a government's -- no,
13 Defendant's Exhibit EXP-1, which are a series of checks
14 from Home Savings that were paid to the order of Allen
15 Sinclair, but that begin on 2-2-2000, and the government
16 objected to these checks as not being relevant because of
17 the testimony we had on the stand and the way the testimony
18 developed.

19 MR. TRAFICANT: It showed the pattern that
20 they talked about.

21 THE COURT: Right. But I'm going to admit
22 these anyway. So these are coming in. Defendant's
23 Exhibit -- it says EXP-1 at the top. I want to make sure
24 this is noted correctly for the record.

25 MR. TRAFICANT: And that includes the lack of

1 22 months of deposits of \$2500? I want to know if that's
2 the document you're talking about.

3 THE COURT: I'll hand it down so you can look
4 at it.

5 MR. TRAFICANT: Let me look at it. Because
6 if you're only leaving in the prosecution section --

7 THE COURT: No. This is yours, sir. This is
8 your exhibit.

9 MR. TRAFICANT: Let me see it.

10 THE COURT: It was your argument it should be
11 admitted. The prosecution objected. I'm admitting it over
12 their objection, so the jury can figure that out.

13 There is an exhibit called HSL-G. That exhibit was
14 never identified by any witnesses that we can find. We've
15 been through the testimony again looking for it, and so as
16 it was not identified, it can't be admitted.

17 MR. TRAFICANT: What is it?

18 THE COURT: I don't know. HSL-G. Does that
19 give you a clue as to what it was?

20 MR. TRAFICANT: Well, how do you know --

21 THE COURT: Well, because we can pull it out.

22 MR. TRAFICANT: If you deny it, what is it?
23 Show me what it is.

24 THE COURT: It's your exhibit.

25 MR. TRAFICANT: It's my exhibit? I didn't

1 bring my exhibits with me. These are under review by the
2 Court. I want to know which one it was.

3 THE COURT: Not these particular ones. We're
4 looking for it right now. It takes a minute.

5 MR. TRAFICANT: I have a minute.

6 THE COURT: HSL-G. So if you look at your
7 things when you go home --

8 MR. TRAFICANT: You say I never admitted it
9 into evidence?

10 THE COURT: You offered it. You offered
11 HSL-G.

12 MR. KALL: Your Honor? If I may, I believe
13 it was identified by Melinda Davies, page 5293 and 5294 of
14 the record.

15 MR. TRAFICANT: Let me -- the prosecution is
16 too willing to help. Let me see it.

17 THE COURT: What is the date on which she
18 testified?

19 MR. TRAFICANT: I don't know.

20 THE COURT: That's okay.

21 MR. TRAFICANT: I don't have the money to buy
22 these transcripts.

23 THE COURT: We'll look it up then.

24 BY MR. KALL: I believe it was March 28th,
25 Your Honor.

1 THE COURT: Okay. And then there was S-27,
2 which is a 302 regarding Sinclair. That will not be
3 admitted.

4 MR. TRAFICANT: I object.

5 THE COURT: I know.

6 MR. TRAFICANT: They didn't offer the witness
7 to refute it. Why would you not let the document in?

8 THE COURT: Congressman, it's not admitted.

9 MR. TRAFICANT: I object.

10 THE COURT: I know.

11 MR. TRAFICANT: This is hearsay and you're
12 letting -- you've let them play with the hearsay rules, and
13 now you deny me the opportunity to, in fact, include a
14 written statement by an FBI agent subject to law into
15 evidence regarding a salient point of this trial.

16 THE COURT: Well --

17 MR. TRAFICANT: And I ask the Court to
18 reconsider that.

19 THE COURT: The hearsay rules apply to this
20 particular statement, and it will not be admitted unless
21 you can show, as you have not, some sort of exception.

22 MR. TRAFICANT: Well, I'd like that to be
23 left open for an exception statement for tomorrow.

24 And two, I stipulate for the record that there is no
25 one that assisted me in this trial other than to take what

1 I consider to be violations of law and attach a number to
2 them.

3 And any further reference to Mr. Colucci as a shadow
4 attorney is false and any more threats against Mr. Colucci
5 or if he is, in fact, in any way bothered with his law
6 license, I am notifying the Court of that at this time.

7 Second of all, Ernestine Thomas, who has, in fact,
8 taken notes, is a graduate of Tennessee Law School, has not
9 passed the bar, and who was engaged by me strictly to take
10 notes since I can't even read my own handwriting.

11 And I appreciate the great job she's done. She can
12 identify herself to the Court.

13 MS. THOMAS: And I am not a legal adviser.
14 Mr. Morford referred to me as a legal adviser. I am not a
15 legal adviser.

16 THE COURT: Well, today you handed up during
17 the testimony a question to him.

18 MS. THOMAS: I actually handed him a note.
19 He created a question. That was not what was written on
20 the paper.

21 THE COURT: Very well. I'm glad you
22 clarified that because there's been some confusion.

23 MR. TRAFICANT: There's no confusion. I
24 represent myself, and in fact, in no way would hire an
25 attorney because of the power that's leveraged against

1 attorneys by the federal government, which has tainted the
2 American system of jurisprudence, and, in fact, has made
3 judges afraid of these people.

4 THE COURT: Okay. Let me go back now to
5 HSL-G, and it was, in fact, identified on page 5307 of the
6 transcript on the 28th, volume 28.

7 MR. TRAFICANT: What is it?

8 THE COURT: On March 28th. It's the --

9 MR. TRAFICANT: Sinclair Vending, and you're
10 going to admit that?

11 THE COURT: Yes. It's the vending account
12 statement.

13 MR. TRAFICANT: The slush fund? Thank you,
14 Your Honor. Your largess is greatly accepted.

15 Are there any other documents we've had in question?
16 And could I have a master list at the conclusion of today's
17 business?

18 THE COURT: Let me just find out from the
19 government if they have any exhibits to offer today.

20 MR. SMITH: Your Honor, we had a list, and
21 you have covered everything that we had that was
22 outstanding. The government has nothing further to offer.

23 THE COURT: Okay.

24 MR. TRAFICANT: Your Honor, I would ask that
25 S-27, the 302 of that matter, be suspended for my

1 opportunity to respond since they had and put on Agent
2 Bushner. They could have put on Agent Pikunas. And it
3 is -- and the agents that took the statement of the 302,
4 and I think Mr. Bushner took the 302, it was highly
5 discussed. They discussed the teamwork on this matter.
6 That team was headed by Bernard Smith, from what I
7 understand, who is under Emily Sweeney. I don't know who
8 is in charge here. But that 302 is relevant.

9 It speaks to motive, it speaks to a seven-day
10 reversal of opinion, and an attitudinal change where a
11 person stated, "I will play no part in quote-unquote
12 getting Jim Traficant." All of a sudden we have a fearful
13 individual who is afraid to meet with Jim Traficant, and
14 the government can't use him for the purposes of
15 memorializing or capturing my voice on some tape.

16 So I would like the opportunity to research law. And
17 as it just so happens to work out, I took a book from the
18 library, and guess what? The section that dealt with
19 hearsay had been removed. So I have to find another
20 criminal evidence rule book today. And I will bring the
21 book in as evidence, and want to make it evidence in the
22 trial, in fact.

23 THE COURT: Well, you don't need to make the
24 rules evidence.

25 MR. TRAFICANT: Well, I find it highly

1 unusual I take a book from the library of the Federal
2 Courthouse and the section I'm looking for is not present
3 and the pages are removed. And I took the book out and
4 signed for it myself. No attorney did. And I want an
5 opportunity to review S-27 and to offer comments relative
6 to its admissibility since the government did offer Bushner
7 as a witness.

8 And if Bushner was reliable enough as a
9 witness to testify, he's reliable enough with his 302.

10 MR. MORFORD: Your Honor, this is just a
11 rehash of things that have already been raised --

12 THE COURT: I've already ruled on this. What
13 you said does not account for the fact that this has to be
14 excluded because it's hearsay. None of these relate to
15 whether it's a hearsay objection -- I mean whether it
16 is -- whether it is somehow an exception to the hearsay
17 rule or it is not.

18 MR. TRAFICANT: My argument --

19 THE COURT: It's not -- don't keep rehashing
20 these arguments over and over again. This one is settled.

21 MR. TRAFICANT: Your Honor, what you're
22 leaving in is pennies and what you're leaving out are
23 dollar bills. And you're giving me token matters into the
24 record that in no way have any significance in the outcome
25 of this trial.

1 THE COURT: Is there anything further from
2 either side here?

3 MR. MORFORD: Not by way of exhibits, no,
4 Your Honor.

5 THE COURT: What I have to do now,
6 Congressman, is to have you explain to me exactly how you
7 intend to proceed tomorrow morning in terms of witnesses.

8 MR. TRAFICANT: I'm going to attempt to get
9 the T. C. Ready Mix fellow here who did the concrete work
10 at the barn that was paid for by check.

11 I'm going to try and get Mr. Christay who did
12 work at the farm, who was paid by the Congressman by check.

13 I'm going to try again through Rotatori and
14 Cascarilla so I can bring in the letter, and I'd like to
15 proffer for the record the letter that Mr. Morford told
16 Mr. Cascarilla that Mr. O'Nesti was not a member of
17 organized crime.

18 It seems that he uses people in different trials.

19 THE COURT: I'm asking you who your witnesses
20 are, and you've talked about a couple that you are going to
21 try to get here. Who are you going to get here tomorrow?
22 We have to know. We have a jury --

23 MR. TRAFICANT: I hope to have them here
24 tomorrow. I have subpoenas out for them.

25 THE COURT: I have to have enough witnesses

1 to get us up until 4:30 tomorrow.

2 MR. TRAFICANT: I will have witnesses here
3 tomorrow to conduct business for your jury. I will work on
4 it.

5 THE COURT: Tell me who they are.

6 MR. TRAFICANT: I'm working on Mr. Chesney,
7 I'm working on the fellow from T. C. Ready Mix, and I'm
8 working on Mr. Rotatori, and I'm working on Mr. Cascarilla.

9 And I am now going to ask for the record if
10 there's been any intervention by the government why
11 Mr. Rotatori has not returned my call and made available to
12 me Mr. Bucci, because they were so easily able to get
13 Mr. Bucci on the stand. I want to know why I can't get
14 Tony Bucci here.

15 THE COURT: Why don't you talk to
16 Mr. Rotatori.

17 MR. TRAFICANT: We've tried. He hasn't
18 returned our calls.

19 THE COURT: Congressman, it is tough to be a
20 trial lawyer. You have to go out and --

21 MR. TRAFICANT: Your Honor, you should compel
22 the attendance of Tony Bucci under these circumstances.
23 Period.

24 THE COURT: Congressman, you've told me now a
25 couple of people who you say that you're going to try to

6 MR. TRAFICANT: You have told me that, you
7 have stated that in front of the jury. And, again, for the
8 record, I object. When I rest --

10 MR. TRAFICANT: When I rest, it is my
11 decision.

14 MR. TRAFICANT: I will notify the Court at
15 that time. When I rest, you will know whether I have taken
16 the stand.

20 MR. TRAFICANT: You do not have the power --

22 You have the right to testify if you choose to. If
23 you choose to, you may not condition your testimony. We
24 had to rule on that yesterday.

1 THE COURT: If you don't want to testify,
2 then you don't have to testify. You have a right not to
3 testify.

4 MR. TRAFICANT: I understand the law.

5 THE COURT: And the jury will be instructed.

6 MR. TRAFICANT: I understand the law.

7 THE COURT: Well, then stop.

8 MR. TRAFICANT: You've already instructed the
9 jury.

10 THE COURT: Then stop interrupting. Just
11 wait a minute so I can finish. Sit down and wait a minute
12 so I can finish.

13 MR. TRAFICANT: I'd prefer to stand and look
14 at you.

15 THE COURT: All right. You can stand and
16 look at me.

17 I have to know, because I have 17 people who serve on
18 this jury, along with a lot of other people who support
19 this trial going forward, what we're going to be doing
20 tomorrow in terms of witnesses.

21 MR. TRAFICANT: We're going to go forward
22 with the jury with witnesses. I am under no further
23 obligation.

24 THE COURT: There are going to be possibly
25 those three people. Is that right?

1 MR. TRAFICANT: Hopefully those three.

2 THE COURT: Then you be ready with your
3 witnesses at 9:00 tomorrow and we will be ready to go
4 forward with the trial.

5 MR. TRAFICANT: We'll go with the jury at
6 9:00.

7 THE COURT: Congressman, we'll go with the
8 jury at 9:00.

9 The other thing I need to know from you right now
10 is -- anticipate for me -- if we get at some point to
11 closing arguments, I want to know what it is you request
12 from the Court in terms of time for closing arguments.
13 This is because we have 17 people here --

14 MR. TRAFICANT: I know that.

15 THE COURT: -- who went home today in the
16 morning because you didn't have enough witnesses.

17 MR. TRAFICANT: And they were very glad to do
18 so.

19 THE COURT: I doubt it, sir.

20 MR. TRAFICANT: Let me say this: He just
21 said earlier that he predicted this to be an eight to
22 ten-week trial, and they took seven weeks. I've only taken
23 two weeks, and you deny --

24 THE COURT: But you have to fill the trial
25 day. Fill the trial day.

1 MR. TRAFICANT: You should not have discussed
2 that, and I object to your discussion.

3 THE COURT: You objected repeatedly.

4 MR. TRAFICANT: This argument with the jury
5 present.

6 Now, here is my suggestion: I recommend two hours of
7 close, the government be limited to an hour in rebuttal.
8 They could take an hour -- they could take -- and they must
9 take only one hour on rebuttal. If they use only 20
10 minutes in their opening, then they'll only have an hour in
11 rebuttal.

12 THE COURT: Just recommend the total you
13 need. I didn't ask you to tell me what they need. Tell me
14 what you want.

15 MR. TRAFICANT: I'm concerned about them
16 giving a five-minute opening and three-hour close, and I
17 want some establishment of order relative to how we will
18 close.

19 THE COURT: That's why I'm asking you.

20 MR. TRAFICANT: I think both sides should get
21 two hours. They could use an hour in the opening, an hour
22 to close with these brilliant minds. They could make their
23 case, and if the pro se defendant can make his in two
24 hours -- and I probably won't use the two hours -- then I
25 think it's an adequate amount of time.

1 THE COURT: All right. I'll give you an hour
2 and a half. I'll give them an hour and a half, and they
3 can split it any way they want to, like they can in every
4 other courtroom in America. It's their choice, what they
5 use where.

6 MR. TRAFICANT: I object to that.

7 THE COURT: Okay.

8 MR. TRAFICANT: They could make a statement
9 one minute and come back and take one hour and 29 minutes.

10 THE COURT: They can do whatever they want to
11 do.

12 MR. TRAFICANT: You're letting them anything
13 they want to do. That's another thing for the record I
14 object to.

15 THE COURT: That's the way it goes with the
16 prosecution.

17 MR. TRAFICANT: No.

18 THE COURT: Sit down so they can stand. They
19 want to talk to me.

20 MR. MORFORD: Your Honor, first of all, I'd
21 like to revisit the witness -- the potential witnesses he's
22 talked about for tomorrow.

23 First of all, he said he wants to call somebody from
24 T. C. Ready Mix to testify that they were paid for the
25 concrete.

1 That's not relevant. Whether he paid for things that
2 were done out at the farm is irrelevant to the charges in
3 this case. It's also not inconsistent with Dave Sugar,
4 who's already testified.

5 To number two, Mr. Chesney did farm work and
6 was paid by check. This Court has already ruled, I
7 believe, that proper conduct on some occasions that aren't
8 charged in the case are irrelevant to the misconduct that's
9 actually charged in the case. Neither one of those are
10 relevant.

11 As far as Mr. Cascarilla in the letter, we've gone
12 over this before. Mr. O'Nesti was never charged with being
13 a member of La Costa Nostra. He was charged with being a
14 liaison, someone who carried money from members to
15 politicians.

16 MR. TRAFICANT: You didn't put that in the
17 letter, sir.

18 MR. MORFORD: All the letter says is he's not
19 a member of any LCN family. It is totally irrelevant to
20 this proceeding.

21 So all three of those witnesses are completely and
22 totally irrelevant.

23 MR. TRAFICANT: Except Mr. Robertson.

24 MR. MORFORD: Well, no, Mr. Robertson is
25 irrelevant because the Congressman has not shown one thing

1 that's relevant that's changed since the time that he had
2 Mr. Robertson on the stand, and in fact, the cover letters
3 show that those cover letters were sent and mailed at least
4 three or four days prior to the time Mr. Robertson
5 testified, and the matter has nothing to do with this case
6 either.

7 MR. TRAFICANT: Mr. Robertson did not receive
8 that information until last evening looking into the matter
9 of Bank One.

10 I want the right to call him tomorrow and confirm
11 whether that was the same Allen Sinclair in question.

12 THE COURT: Here is what I want to point out
13 to you, Congressman. You've just been given a preview by
14 the government of some of the objections they may make if
15 you call these witnesses. You certainly ought to take
16 those into consideration. But I'm going to permit you to
17 go forward with those witnesses. If you're going to bring
18 them in in the morning, that's fine. You have them here
19 and have them all here at 9:00, so that if, in fact, it
20 turns out that their testimony can be used, we're not
21 delaying the jury.

22 The second thing is, that's why I'm asking you a
23 question today about your own choice about whether or not
24 you're going to be a witness or not, because we have to be
25 prepared to go forward with this case.

3 THE COURT: No, but you have to be ready to,
4 Congressman.

7 THE COURT: Congressman --

10 THE COURT: No, this trial could not go
11 another month.

14 THE COURT: Congressman, you can be a witness
15 in this case if you choose, but you will have to be --

20 THE COURT: If you --

23 THE COURT: Thank you.

1 allow me to state the end of my statements, maybe it will
2 dis --

3 MR. TRAFICANT: I will not answer your
4 question relative to whether or not I'll take the stand,
5 and you have no right to poison a jury with that statement
6 you made.

7 And I have a motion on the floor for dismissal on
8 that count. So why don't you just rule again against it
9 and let's get my witnesses on tomorrow and move forward.

10 THE COURT: Because what I wanted to tell you
11 was that after these witnesses have testified or not,
12 depending on what it is they turn out to be here to testify
13 for, you then will have to be the next witness unless you
14 have other witnesses.

15 MR. TRAFICANT: If I don't have witnesses and
16 I take the stand, then I take the stand.

17 THE COURT: Fine. And if you don't --

18 MR. TRAFICANT: That will be my decision.

19 THE COURT: And if you don't take the
20 stand --

21 MR. TRAFICANT: And I do not need to inform
22 this Court as to how I plan my defense.

23 THE COURT: But you need to be aware that if
24 you do take the stand, it will be tomorrow, probably, and
25 if you don't take the stand, which is also fine, we will

1 probably be going into the section of this trial where we
2 do closing arguments. And they need to know that, too.

3 I also need to know it so I can make proper
4 arrangements with the jury. So that's why we were having
5 all this discussion. And --

6 MR. TRAFICANT: In front of the jury?

7 THE COURT: No. Right now.

8 MR. TRAFICANT: No. You had it in front of
9 the jury, Your Honor. You discussed closing arguments,
10 whether or not I was going to testify in front of a jury.

11 THE COURT: That's right. That's right.

12 MR. TRAFICANT: That is highly unusual.

13 THE COURT: Well, that's --

14 MR. TRAFICANT: As well as having my trial
15 documents, as well as quashing the subpoena for Judge Ann
16 Aldrich.

17 THE COURT: Okay. Are you ready now?

18 MR. TRAFICANT: Yes. You've denied every
19 witness I brought in here.

20 THE COURT: I understand you say that.

21 MR. TRAFICANT: Now, I will decide, and that
22 is my decision to make, not the Court's.

23 You decide on the law; I decide on my defense.

24 THE COURT: It's the law --

25 MR. TRAFICANT: Whatever their problem is,

1 they deal with it.

2 THE COURT: Okay.

3 MR. MORFORD: Your Honor, my objection is
4 this: Congressman Traficant has not demonstrated to the
5 Court one relevant thing these witnesses would testify to
6 tomorrow, but what he did do today, and as he's done
7 several times in front of this jury, is suggest to the jury
8 that you are not letting him put on a case, and to go
9 through this charade of having witnesses take the stand,
10 having him ask a couple questions, have the objection
11 sustained and have the witness leave because the witness
12 had nothing relevant to testify to, and to bring these poor
13 people back to sit around all day for this charade I think
14 is wrong.

15 Unless he can tell the Court some relevant
16 reason that he has additional witnesses, the fact that
17 after being admonished several times by the Court that he
18 needed to have witnesses here, the fact that he has no
19 witnesses and the fact that he cannot articulate to the
20 Court a single witness that's going to provide relevant
21 testimony tomorrow, the case ought to be closed, number
22 one.

23 And number two, I would ask if the Court is going to
24 go forward and let him bring in witnesses, that he only
25 bring in witnesses that he can show have admissible,

1 relevant testimony, number one; and that if he runs out of
2 witnesses tomorrow, that he does rest and it's over.

3 THE COURT: Okay.

4 MR. TRAFICANT: I want to respond to this
5 gutless prosecutor.

6 THE COURT: We don't need any more responding
7 now.

8 MR. TRAFICANT: Are we finished?

9 THE COURT: 9:00 in the morning, Congressman,
10 with your witnesses, please.

11 MR. TRAFICANT: Thank you.

12 THE COURT: Do you have anything further?

13 MR. MORFORD: Yes. As far as closings, do we
14 assume we're going to do those then on Friday or --

15 THE COURT: Well, I think you should be ready
16 to do them as early as tomorrow. I can't really tell
17 because I don't know what's going to happen with these
18 witnesses.

19 Here is the thing about the way it goes:
20 Congressman, if you will recall, from the beginning of this
21 case, after everybody has finished with hearing evidence in
22 the case, the next thing we do is give instructions to the
23 jury up to a point. The jury gets basically the
24 instructions except for those that they need when they
25 actually go back to deliberate.

1 After they've been given the basic instructions and
2 the law, then we entertain closing argument. I take it
3 both sides want to do it here. And we have, as I told them
4 and you before, and as you recognized, the Congressman
5 recognizes, you go first, he goes, and then you go.

6 Then I give the last short instructions to the jury,
7 which are the fundamental ones about how they choose a
8 foreman and verdict forms, and things like that. And then
9 the case is put in the jury's hand for a verdict.

10 So that's what we're looking at. And the only
11 question is: When does it begin. And I think it's
12 possible that it will begin tomorrow. I don't know. It
13 may begin the next morning. I don't know. It may begin at
14 some other time. But we have to be ready for it on both
15 sides. And that's why I asked the Congressman how much
16 time he wants.

17 One hour is common. This case is exceedingly long.

18 MR. TRAFICANT: One hour would be
19 satisfactory to me.

20 THE COURT: So I wouldn't mind going with an
21 hour and a half. But two hours was too long.

22 MR. TRAFICANT: Two hours would be too long?

23 THE COURT: So you would have to split your
24 one and a half hours however you decide you want to split
25 it. But we don't put conditions on how many minutes they

1 do in front or on the other side.

2 MR. TRAFICANT: In other words, you're saying
3 they could stand up and say, Your Honor, Members of the
4 Jury, we believe the defendant is guilty, and they rest.
5 And then I go and they come back for one hour and 30 -- and
6 29 minutes. Is that what you're suggesting?

7 THE COURT: You shouldn't be suggesting these
8 things to them. I'm not sure they ever thought of that.

9 MR. TRAFICANT: You're allowing that. Do you
10 think that's fair? Do you think that's fair?

11 THE COURT: Congressman, we never put
12 restrictions like that --

13 MR. TRAFICANT: Shouldn't you at least
14 restrict their close to one hour? Let them take a
15 half-hour opening.

16 THE COURT: They get the same amount of time
17 you get, but they get to split it. That's because they
18 have the burden of proof.

19 MR. TRAFICANT: Yes. Well, let me inquire
20 now about the Court. Once the trial is finished,
21 regardless of what my final position is, what is the next
22 step? The exact next step. I'm asking you to tell me.

23 THE COURT: You mean once the evidence is all
24 in or once we've instructed the jury and we get a verdict?

25 MR. TRAFICANT: No. Once I rest, what do we

1 do next?

2 THE COURT: That's what I just went over.

3 MR. TRAFICANT: I want you to go over it
4 again.

5 THE COURT: Normally what happens --

6 MR. TRAFICANT: Not normally. I want to know
7 what's going to happen.

8 THE COURT: In your case, the same thing that
9 happens in all criminal cases.

10 MR. TRAFICANT: Well, then tell me.

11 THE COURT: That's what I just did.

12 MR. TRAFICANT: No. You said "normally." It
13 implied that there could be something abnormal.

14 THE COURT: Occasionally somebody wants
15 rebuttal or something, but we don't have that in this case.

16 MR. TRAFICANT: Is there rebuttal?

17 MR. MORFORD: You haven't finished your case
18 yet, apparently.

19 THE COURT: They have to decide.

20 MR. TRAFICANT: But you didn't state that,
21 did you?

22 THE COURT: No, I didn't, because there's no
23 indication that we're going to have rebuttal. If we have
24 it, we have it.

25 MR. TRAFICANT: You didn't ask them that,

1 though, did you?

2 MR. MORFORD: Yes. Actually we were asked
3 earlier. We said there would not have been had the
4 Congressman rested. We don't know what he's doing
5 tomorrow, so we're going to keep the option.

6 MR. TRAFICANT: You mean you have an option?
7 But you wanted to deny me an option.

8 THE COURT: Anyway, do you want me to go over
9 it? I'll be happy to do it again.

10 MR. TRAFICANT: Yes. I want you to go over
11 it very carefully, and I don't want you to go over it as
12 normal. I want you to go over it as it will actually be.

13 THE COURT: Well, there are some things we
14 can't tell exactly.

15 MR. TRAFICANT: I want to know if the jury
16 instructions are finalized, and if they have been, given to
17 me.

18 THE COURT: We gave you an opportunity to
19 participate in the jury --

20 MR. TRAFICANT: I asked you to be fair. I
21 wanted to see the jury instructions you made. All I asked
22 you to do was be fair.

23 THE COURT: We said I think two weeks ago or
24 a week ago or something that those were available. If you
25 wanted a copy, you can have a copy, a draft copy of the

1 instructions.

2 I can't do the jury instructions, Congressman,
3 completely until I've heard all of the evidence in the
4 case, and I may or may not have done that.

5 So --

6 MR. TRAFICANT: Well, you haven't heard any
7 evidence in this case. You denied all my witnesses.

8 THE COURT: Okay. Well, anyway, the jury
9 instructions are available in draft form for you to look at
10 if you want to look at them. There's no problem with that.

11 MR. TRAFICANT: Why cannot I be given a copy
12 of it?

13 MR. SMITH: He was.

14 THE COURT: We offered you a copy. We
15 offered you a copy of the jury instructions.

16 MR. TRAFICANT: Where?

17 THE COURT: Here.

18 MR. TRAFICANT: Give it to me.

19 THE COURT: You just have to ask the clerk
20 for one.

21 MR. TRAFICANT: Give me one.

22 THE COURT: We'll have to go get one if you
23 want to.

24 MR. TRAFICANT: Give me one.

25 THE COURT: We will.

1 Anyway, the jury instructions, the first three
2 sections, A, B, and C as they're called in the jury
3 instructions, are read aloud to the jurors. They have
4 copies, they're sitting there. We read them out loud.

5 You have copies while we're reading them. That gets
6 finished. Then we go to closing arguments.

7 And they go first, and then you go, and then they
8 have the last word, so to speak.

9 MR. TRAFICANT: And they could take an
10 hour --

11 THE COURT: And then we send it to the -- we
12 hand the case to the jury, and they go deliberate, and then
13 at some point, I don't know when, we have a verdict, and
14 that's the way the case goes.

15 MR. TRAFICANT: And it is your now decision
16 that they could make a one-minute opening?

17 THE COURT: I'm not making that decision
18 because that isn't in front of me. I don't know what
19 they're going to do.

20 MR. TRAFICANT: But they're allowed to do
21 that; under your order they're allowed to do that. Is that
22 correct?

23 THE COURT: In any court.

24 MR. TRAFICANT: Well, then I move and I make
25 a motion that they be limited to a one-hour close.

1 THE COURT: Well, you want --

2 MR. TRAFICANT: I have a motion in limine
3 that they -- we both have an hour and a half, but their
4 close be limited to a half hour.

5 THE COURT: The motion is denied,
6 Congressman. That would be an extraordinary thing to do.
7 I'm not going to do that.

8 MR. TRAFICANT: It was granted in the first
9 trial. It was granted out of fairness.

10 THE COURT: Okay. Well, this is not 1983.

11 MR. TRAFICANT: It certainly isn't. There is
12 no justice today.

13 THE COURT: We'll see you at 9:00 in the
14 morning, sir.

15 Do you have a question? You look like you have a
16 question. No?

17 MR. MORFORD: I was just thinking. I'm
18 trying to think of time --

19 THE COURT: Is an hour and a half acceptable?
20 You never got a chance to respond to that.

21 MR. MORFORD: I would have asked for an hour
22 and 45, but if the Court wants to go with an hour, we'll go
23 with an hour.

24 MR. TRAFICANT: I think an hour is enough.

25 MR. MORFORD: The second thing, Your Honor,

1 I'm just thinking in terms of the timing, if we have any
2 witnesses tomorrow, we're then going to have to go through
3 and review each other's evidence and make sure there's no
4 extraneous notes, documents, things like that.

5 THE COURT: Right.

6 MR. MORFORD: I assume the Court is going to
7 go over the charge with us.

8 And then if we have the Court read the charge, which
9 will probably take an hour, and have three hours of
10 closing, in my mind I'm not seeing that happening all
11 tomorrow.

12 THE COURT: Well, it may well be it's the
13 next day. That's what I said. I don't really know until
14 we get into it. You should be ready tomorrow to do a
15 close, both of you, and if it doesn't happen tomorrow, then
16 you will have gotten ready.

17 I'm sorry I can't be more specific, but this case is
18 quite unpredictable.

19 MR. MORFORD: I was going to ask the Court if
20 you could just schedule the closings for Friday so we'll
21 know as opposed to being --

22 MR. TRAFICANT: What's the date today?

23 MR. MORFORD: It's Wednesday.

24 THE COURT: You mean of the week? It's
25 Wednesday. It's the 3rd.

1 MR. TRAFICANT: I would agree that if I take
2 the stand, this trial may last another two, three weeks.

3 If I do not take the stand, then I believe it is
4 reasonable to assume that Mr. Morford's one reasonable
5 suggestion would be acceptable to the defendant pro se, and
6 that closing arguments -- both sides be given an
7 opportunity for Friday if I do not take the stand.

8 But I do caution the Court that if you poison this
9 jury one more time relative to my taking or not taking the
10 stand, that you'll have to send a marshal for me, because I
11 am not coming back to your courtroom. You can put that on
12 the record.

13 THE COURT: It's on the record. Everything
14 you say is on the record.

15 Okay. Here is what I just wanted to suggest to both
16 of you. I understand that it is easier if you know if
17 you're going to do a closing argument or not. It's a very
18 important time for the preparation of lawyers and pro se
19 defendants.

20 On the other hand, I have a jury that has been sent
21 home early more than once, and I have to consider the fact
22 that these men and women are spending a great deal of their
23 lives and interrupted lots of activities in their lives
24 that affect many other people.

25 So if it turns out that the timing is better to let

1 that closing statement go forward tomorrow afternoon,
2 you'll certainly have the noon hour before that happens,
3 but I can't promise you. I think we'll know better
4 tomorrow when we know what the Congressman's decision is,
5 we'll know better. But I think you both need to be
6 prepared to go tomorrow as well as Friday, because it
7 doesn't look to me like even if we have testimony, from
8 what you've described, it doesn't look to me as if we've
9 got long testimony, unless you decide, as you're entitled
10 to, that you want to take the stand.

11 MR. TRAFICANT: Your Honor, did you rule on
12 their motion relative to Count 10, that if only two of the
13 counsel unanimously agree to --

14 THE COURT: Yes, I did.

15 MR. TRAFICANT: Did you rule in their favor?

16 THE COURT: It's -- the ruling is out. Let
17 me make sure you have a copy of it.

18 MR. TRAFICANT: Did you rule in their favor,
19 which makes it about 21 counts?

20 THE COURT: This is only a special verdict
21 form on Count 10.

22 Oh, I know. This is the one where you raised all the
23 objections that would have to do with double jeopardy, and
24 so forth.

25 MR. TRAFICANT: Yes.

1 THE COURT: Okay. Well, you raised that in
2 response to the request, but you didn't raise any of that
3 in the motion, so I dealt with the motion which came in
4 regarding the special verdict form for Count 10.

5 Do they have copies of this yet?

6 THE CLERK: Yes.

7 MR. TRAFICANT: And you're ruling with the
8 government? Are you ruling with the government? Yes or
9 no.

10 THE COURT: You can go read it.

11 MR. TRAFICANT: I am just asking you for the
12 record, did you rule with the government?

13 THE COURT: Well, in a sense I did and in a
14 sense I didn't.

15 In the sense I didn't was I didn't accept their
16 proposed form which they sent to me. But in terms of their
17 request --

18 MR. TRAFICANT: Well, what's the form have to
19 do with it?

20 THE COURT: There is a special verdict form.

21 MR. TRAFICANT: And what is the special
22 verdict form for Count 10? Could you tell me what you've
23 approved for the record?

24 THE COURT: I don't have to tell you for the
25 record. I've offered you the entire package of jury

1 instructions and will let you see all of the verdict
2 forms --

3 MR. TRAFICANT: But I am directly asking you.

4 THE COURT: Do you want to see the verdict
5 form right now?

6 MR. TRAFICANT: Yes.

7 THE COURT: Okay. Maybe we can get you the
8 draft verdict forms right now while we're all sitting here.

9 MR. TRAFICANT: I want to see how much more
10 opportunity you're going to give these three bureaucrats.

11 THE COURT: We don't have copies of the
12 verdict forms because there's only one verdict form, but
13 I'm willing to have my clerk take a minute. Go get the
14 one --

15 MR. TRAFICANT: You mean I wasn't given a
16 copy of the verdict form? There is only one?

17 THE COURT: Nobody is ever given a copy
18 except the jury of a verdict form, but we let you look at
19 the verdict form so you can file objections to it if you
20 wish to.

21 MR. TRAFICANT: Let me inquire: In essence
22 you're saying that only two of the overt acts have to be
23 unanimously agreed to. The only thing you don't like is
24 the little lines they put on the piece of paper. Is that
25 what you're telling me? Yes or no.

1 I may be the son of a truck driver, but I
2 wasn't born yesterday. I've got a train to run here. I'd
3 appreciate that form immediately.

4 THE COURT: Okay.

5 MR. TRAFICANT: So it is evident that I
6 didn't receive the form.

7 THE COURT: No, no, no. Nobody gets the
8 verdict forms except the verdict -- the jury.

9 MR. TRAFICANT: You said you ruled on it.

10 THE COURT: I ruled on a motion. Here is the
11 order. It was issued at 9:00.

12 MR. TRAFICANT: When?

13 THE COURT: Today.

14 MR. TRAFICANT: Just today.

15 THE COURT: Just today. We've had a lot of
16 motions, Congressman.

17 MR. TRAFICANT: And you didn't take into
18 consideration my response of the double jeopardy at all?

19 THE COURT: Yes, I did. It's all set forth
20 in here.

21 MR. TRAFICANT: And you ruled against it.

22 THE COURT: Why don't you sit down while he's
23 trying to find the jury verdict forms and read my copy of
24 my order. You can get these, you know.

25 MR. TRAFICANT: You are to give them to me.

1 THE COURT: We did. We sent it to you. You
2 were handed a copy, and here you are.

3 MR. TRAFICANT: I am not in receipt of it.
4 You just sent your man to the back room.

5 THE COURT: I'm going to come down and we're
6 going to stand at the front, and I'll hand you each a copy
7 of each of the verdict forms. They're drafts because we
8 haven't finished everything in the case yet.

9 MR. TRAFICANT: The government's request is
10 granted.

11 The only thing you've changed is the form.

12 THE COURT: Right.

13 MR. TRAFICANT: That's a form with lines on
14 it.

15 Now, let me see the form that you're using.

16 THE COURT: I have it right here.

17 MR. TRAFICANT: You have basically made this
18 a 21-count indictment.

19 THE COURT: Well, that's your position. Ed,
20 can you take these one at a time and show one at a time
21 whoever wants to look at it, what it looks like?

22 MR. TRAFICANT: Thank you, Edward.

23 THE COURT: This is your chance to --

24 MR. TRAFICANT: I would like to compare them
25 with what the government had submitted.

1 THE COURT: They didn't submit any verdict
2 forms except the special RICO one.

3 MR. TRAFICANT: This is the one we're dealing
4 with. That takes away all the property, puts me in jail
5 for 23 years, and you're talking about a day's trip of a
6 jury, and you never once talked about the rights of the pro
7 se defendant. And let that also be noted for the record.

8 THE COURT: Got that?

9 MR. TRAFICANT: I understand the jury has a
10 responsibility. As an American citizen, that is their
11 responsibility. And no time restraints shall deny justice.
12 That's a founding document. And all you've done is you've
13 changed their form. You've made this a 21-count
14 indictment.

15 I now object to such decision and find the Court to
16 be biased in its actions, in favor of the prosecution, and
17 further state for the record if they get their ass kicked
18 tomorrow, they're going to be the laughing stock of the
19 United States of America, and don't count it out before
20 this week is out or next week, that that doesn't happen.

21 Because you have a guy that understands the
22 Constitution and knows when it's been shredded like toilet
23 tissue, and it's been done in this case, and that's for the
24 record. Toilet tissue. Put Charmin down.

25 THE COURT: We're in adjournment until

1 tomorrow morning at 9:00. Please be prepared, Congressman.

2 (Trial adjourned at 12:36 p.m.)

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C E R T I F I C A T E

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10 I certify that the foregoing is a correct transcript

11 from the record of proceedings in the above-entitled

12 matter.

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Heidi Blueskye Geizer, RMR, CRR

Date

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1	DIRECT EXAMINATION OF MICHAEL S. TERLECKY	
2	BY MR. TRAFICANT.....	5783:13
3	CROSS-EXAMINATION OF MICHAEL S. TERLECKY	
4	BY MR. MORFORD.....	5792:5
5	REDIRECT EXAMINATION OF MICHAEL S. TERLECKY	
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9	FURTHER REDIRECT EXAMINATION OF MICHAEL S. TERLECKY	
10	BY MR. TRAFICANT.....	5831:6
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